

Written statements provided by parties-of-record with their oral arguments at the closed record appeal hearing on October 3, 2018. Council did not consider any new information or appeal issues, if any, identified in these documents, consistent with SCC 30.72.110

Received by:

1. Tom McCormick
2. Pearl Noreen
3. Dennis Casper
4. Barbara Twaddell
5. Robert Hauck
6. Karen Briggs
7. Jack Malek
8. John John
9. Domenick Dellino
10. Edith Loyer Nelson
11. Jan Eckmann
12. George Mayer
13. Tracy Tallman
14. Kathy Zufall
15. Tom Mailhot
16. Bill Krepick
17. Robin McClelland

Hello Councilmembers,

I am delivering these comments on behalf of Tom McCormick, a party of record, who apologizes that he could not be here today.

One thing I've learned while opposing BSRE's project for the last 4-1/2 years, and reviewing thousands of public records, is that you can't trust BSRE. You can't believe what its experts say.

Why of course we'll make sure that we'll get on-site high capacity transit access at Point Wells, just not right away. BSRE knows it can't guarantee this. They don't control Sound Transit and Burlington Northern.

Why of course we'll design things to ensure that the landslide hazard risks are dealt with, but that's for later in the process. ... Our project can always be approved subject to conditions.

We are motivated to resolve all issues raised by PDS and will work diligently to do so, if just given a little more time. What about the last seven years? If BSRE had been diligent, would we be here today?

In a 2015 report they said, "the provision of a secondary access to the site to provide for public safety and welfare ... is not warranted." Imagine, 6,000 residents, and thousands of visitors and workers, and BSRE said a second road is not warranted.

For the last seven years, we didn't know that we were doing anything wrong regarding how we determined the 150-foot and other shoreline buffers on our site plans. So says a developer of a billion-dollar project, spending over \$10 million on the supposed best advice money can buy. The law has been crystal clear since 2007.

We will confirm later in the process that the liquefaction risk can be mitigated to make the site suitable for development.

I don't believe them or trust them. The Hearing Examiner correctly concluded that BSRE has not been diligent, and its applications substantially conflict with County Code. Buildings too tall; buildings located too close to the shoreline; buildings and a second road that fail to satisfy landslide hazard rules; a faulty critical areas report; and BSRE's failure to show the site is even suitable for development considering that much of the site is susceptible to high liquefaction, a major public safety issue. The conflicts are so substantial that it would waste time and resources to let BSRE keep doing what it's been doing, and try to prepare an EIS that is supposed to summarize the project and evaluate its impacts. With so many Code conflicts, we really have no idea what a Code-compliant project would look like. It is fruitless trying to summarize the unknown.

I trust that you will conclude that the Hearing Examiner was correct in his decision denying BSRE's applications and refusing to extend BSRE's application expiration date.

Thank you,
Tom McCormick

Hello Councilmembers,

I am a party of record. My comments relate to pages 13-15 of BSRE's appeal.

BSRE appeals the Hearing Examiner's conclusion that the maximum building height at Point Wells is 90 feet. It claims that it qualifies for an additional 90 feet because its project is located near a high capacity transit route. The Examiner correctly rejected that argument because there is no transit access at Point Wells.

If I told you that I am looking for a new apartment located near a light rail route, or a bus rapid transit route, or a train route, what am I conveying? The answer is obvious. I'm looking for an apartment within walking distance of a place where I can board high capacity transit.

When normal people say their property is located near a transit route, they mean that they have transit access nearby. That's what the Hearing Examiner concluded.

Please look at page 2 of my handout, containing the Code section on building heights. The highlighted words say that an additional 90 feet may be approved when the project is located near a high capacity transit route or station.

BSRE's spin on the highlighted words is that since Sound Transit's Everett-to-Seattle route uses train tracks that bisect Point Wells, the site is located near a high capacity transit route, though the train doesn't stop there. The Hearing Examiner rejected that spin. Access is required, not mere proximity.

BSRE seems to think that its interpretation of the Code, one that doesn't require access, is the only one that makes sense. The Examiner concluded otherwise. The correct and obvious interpretation is that to qualify for an additional 90 feet, the project must either (1) be near an accessible bus rapid transit route or light rail route, or (2) be near a train station. There must be access.

Please look again at page 2 of my handout. If all that was required were mere proximity to a train route without access, there would have been no reason for Council to have included the word "station" in the Code, for all train stations are located on a train route. The word "station" must be there for a reason. There is only one way that the words "route or station" each have meaning. To get an additional 90 feet, the project must be near a bus rapid transit route or light rail route with access, or near a train station with access.

BSRE's proposed buildings fail to qualify for an additional 90 feet because there is no high capacity transit access at the project site.

The Hearing Examiner was right. Please affirm the denial. Twenty-one buildings taller than 90 feet present a substantial Code conflict.

Thank you,

Pearl Noreen

SCC 30.34A.040(1) Building height (2010)

The maximum building height in the UC zone shall be 90 feet. A building height increase up to an additional 90 feet may be approved under SCC 30.34A.180 ~~when the additional height is documented to be necessary or desirable~~ when the project is located near a high capacity transit route or station

pursuant to chapter 30.61 SOC that includes an analysis of the environmental impacts of the additional height on, at a minimum: (a) aesthetics; (b) light and glare; (c) noise; (d) air quality; and (e) transportation.

For example, near a bus rapid transit route

For example, near a train station

SCC 30.34A.040(1) has three requirements for buildings to qualify for an additional 90 feet:

1. The additional height must be documented to be necessary or desirable. (Per the Hearing Examiner, this means necessity or desirability "for some reason other than the applicant's desire." The additional height must be necessary or desirable "from a public, aesthetic, planning, or transportation standpoint.")
2. The project must be located near a high capacity transit route or station. (Per the Hearing Examiner, transit access is required.)
3. The applicant must prepare an EIS.

5-7. For this reason, all Findings of Fact, Conclusions of Law and rulings related to the IDD should have been revised pursuant to SCC 30.72.065(2)(f), and the Hearing Examiner's Decision should be reversed on these points because of the Hearing Examiner's failure to follow applicable procedures.

E. The Findings of Fact, Conclusions of Law and Rulings Related to the Requirement for High Capacity Transit Reflect an Error of Law, are not Supported by the Record, and Failed to Follow Applicable Procedures.

BSRE supplied sufficient evidence to indicate that proximity to a high capacity transit route is sufficient to allow for additional height pursuant to SCC 30.34A.040(1). In the alternative, BSRE demonstrated its dedication to providing high capacity transit, in the form of Sound Transit and/or via water taxi, such that the Hearing Examiner could and should condition the project on having high capacity transit rather than finding that the project is in substantial conflict with the code at this point. Further, the requirement for the additional height to be "necessary or desirable" is a conclusion to be made following the analysis to be included in the project's environmental impact statement, as set forth in SCC 30.34A.040(1). This matter was not discussed at the hearing, and the Hearing Examiner erred by deciding that issue on his own prior to the completion of the EIS. For these reasons, all Findings of Fact, Conclusions of Law and rulings in the Decision which relate to high capacity transit, including, but not limited to, F.56, F.57, F.58, F.59, F.60, F.62, F.63, C.20, C.34, C.35, C.36, C.37, C.38, C.39, C78, and ruling 4, should be reversed.

i. Proximity to a Transit Station is Sufficient.

The Hearing Examiner committed an error of law by determining, without justification, that while "a high capacity transit route is near the project, proximity alone is not enough." C.36. SCC 30.34A.040(1) states:

1 The maximum building height in the UC zone shall be 90 feet. A
2 building height increase up to an additional 90 feet may be approved
3 under SCC 30.34A.180 when the additional height is documented to
4 be necessary or desirable when the project is located near a high
5 capacity transit route or station and the applicant prepares an
environmental impact statement pursuant to chapter 30.61 SCC that
includes an analysis of the environmental impacts of the additional
height on, at a minimum:

- 6 (a) Aesthetics;
- 7 (b) light and glare;
- 8 (c) noise;
- 9 (d) air quality; and
- 10 (e) transportation.

11 SCC 30.34A.040(1). The Hearing Examiner's conclusion that proximity is not enough ignores the
12 plan language of the statute. "Statutes must be read so that each word is given effect and no portion
13 of the statute is rendered meaningless or superfluous." *City of Spokane Valley v. Spokane County*,
14 145 Wn. App. 825, 831, 187 P.3d 340 (2008). While the County has argued that "proximity is not
15 enough," an agency does not get deference for a statutory interpretation which conflicts with the
16 plain language of the statute. *Dept. of Labor & Indus. v. Landon*, 117 Wn.2d 122, 127, 814 P.2d
17 626 (1991).

18 C.36, and all other Findings of Fact, Conclusions of Law and rulings which state or imply
19 that proximity to a route is not sufficient, directly conflict with the plain language of the statute,
20 which provides two alternatives for high capacity transit—the project must be located either near
21 a high capacity transit route *or* a high capacity transit station. SCC 30.34A.040(1) (emphasis
22 added). The only reading of this statute which does not render a portion of the statute "meaningless
23 and superfluous" is that which recognizes both options: (1) proximity to a high capacity transit
24 route; or (2) proximity to a high capacity transit station.

1 The fact that the Growth Management Hearing Board (the “GMHB”) ruled in *City of*
2 *Shoreline, et al. v. Snohomish County, et al.*, Coordinate Case Nos. 09-3-0013c and 10-3-0011c,
3 that proximity is not enough has no bearing on the interpretation of SCC 30.34A.040(1) [2010].
4 RCW 36.70A.302 provides the GMHB may determine that all or part of a comprehensive plan or
5 development regulations are invalid, however, it states that such authority is “proscriptive in
6 effect” only:
7

8 A determination of invalidity is prospective in effect and does not
9 extinguish rights that vested under state or local law before receipt
10 of the board’s order by the city or county. The determination of
11 invalidity does not apply to a completed development permit
application for a project that vested under state or local law before
receipt of the board’s order by the county or city

12 RCW 36.70A.302(2). The Washington Supreme Court recognized this in *Town of Woodway v.*
13 *Snohomish County*, 180 Wn.2d 165, 322 P.3d 1219 (2014). There, the Court held that “whether
14 or not a challenged plan or regulation is found to be noncompliant or invalid, any rights that vested
15 before the [GMHB]’s final order remain vested after the order is issued.” *Id.* at 175. Therefore,
16 even if the interpretation of SCC 30.34A.040(1) changed after the GMHB’s ruling in *City of*
17 *Shoreline*, that does not alter the plain language of the statute as it applies to BSRE’s applications.
18

19 Because the GMHB’s ruling does not change the plain language of SCC 30.34A.040(1)
20 and because statutes must be interpreted such that no word or phrase is rendered meaningless or
21 superfluous, the only possible reading of SCC 30.34A.040(1) allows additional height where the
22 urban center is proposed near *either* a high capacity transit route *or* station. Point Wells is located
23 near a high capacity transit route and therefore additional height for the buildings is available.
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Hello Councilmembers,

I am a party of record. My comments relate to pages 16-17 of BSRE's appeal.

BSRE says that even if access to the Sounder train at Point Wells is necessary to qualify for an additional 90 feet, its plans for a future train station ought to suffice.

BSRE hopes eventually to get Sound Transit and Burlington Northern to approve a train station with access at Point Wells, after enough people reside there. It thinks that its so-called plans ought to be good enough to qualify for the 90-foot height bonus.

What I want to know is, where in the Code does it say that a developer's plans for a future station are good enough? Please look at the Code section included with speaker 2's remarks. I do not see the word "planned" anywhere. I do not see the phrase, "near a *planned* route or station." The absence of the word "planned" is significant. You qualify for the 90-foot height bonus only if buildings are near an existing train station. If it was intended that a developer could qualify for the 90-foot height bonus feet by having some so-called plans for a future station, the Code would say that. It doesn't. The absence of the word "planned" is especially significant because other Code sections like 30.34A.085 use the words "existing or planned" when referring to high capacity transit, making it clear that for the purposes of those sections a planned station will suffice, and not just an existing station.

But even if a planned station could qualify for the 90-foot height bonus, that doesn't help BSRE. Its so-called plans are irrelevant. Sound Transit's approval is what matters. Sound transit would need to adopt a definite plan for a train station at Point Wells, like it did with the planned light rail stations in Shoreline and Lynnwood. There are no such plans for Point Wells.

The Examiner gave short treatment to BSRE's argument that its plans ought to suffice, saying at paragraph C.35, "Based on the record, any claim that Sound Transit will operate a commuter rail stop at Point Wells is speculative at best."

The 90-foot height bonus is reserved for buildings located at the core of an Urban Center, near a train station or a bus rapid transit route. Because there is no train station or bus rapid transit route at Point Wells, and no approved plans for either, the Examiner was correct in denying BSRE's applications. Because BSRE has failed to provide 100% certainty of high capacity transit access at Point Wells, it is prohibited from having buildings taller than 90 feet.

The Hearing Examiner correctly denied BSRE's applications. Its 21 buildings taller than 90 feet substantially conflict with County Code. Please affirm the denial.

Thank you,

Dennis Casper

SCC 30.34A.040(1) Building height (2010)

The maximum building height in the UC zone shall be 90 feet. A building height increase up to an additional 90 feet may be approved under SCC 30.34A.180 when the additional height is documented to be necessary or desirable **when the project is located near a high capacity transit route or station** and the applicant prepares an environmental impact statement pursuant to chapter 30.61 SCC that includes an analysis of the environmental impacts of the additional height on, at a minimum: (a) aesthetics; (b) light and glare; (c) noise; (d) air quality; and (e) transportation.

For example, near a
bus rapid transit route

For example, near a
train station

SCC 30.34A.040(1) has three requirements for buildings to qualify for an additional 90 feet:

1. The additional height must be documented to be necessary or desirable. (Per the Hearing Examiner, this means necessity or desirability "for some reason other than the applicant's desire." The additional height must be necessary or desirable "from a public, aesthetic, planning, or transportation standpoint.")
2. The project must be located near a high capacity transit route or station. (Per the Hearing Examiner, transit access is required.)
3. The applicant must prepare an EIS.

1 ii. *BSRE Acted Diligently in Attempting to Reach Agreement with Sound*
2 *Transit for a Station at Point Wells.*

3 The record shows that BSRE has had substantial contact with Sound Transit and that Sound
4 Transit has advised BSRE *that it will not commit to providing a station at Point Wells until BSRE*
5 *has received approval and can guarantee a certain number of residents. See Douglas A. Luetjen's*
6 May 24, 2018 Testimony; Exhibit H-24. The Examiner clearly erred in faulting BSRE for failing
7 to obtain Sound Transit's commitment to provide service for a project which has not yet been
8 approved.

9 As demonstrated by Exhibit H-26 and Douglas A. Luetjen's May 24, 2018 testimony,
10 Sound Transit has considered adding a stop in the Richmond Beach/Shoreline area, and it is
11 BSRE's understanding that the stop considered to be in the Richmond Beach/Shoreline area was
12 specifically considered by Sound Transit to be at Point Wells. *See Exhibit H-24, where Sound*
13 Transit specifically added a comment on its Final Environmental Impact Statement in response to
14 a letter from BSRE stating "A Sounder station in the general vicinity of Shoreline/Richmond
15 Beach is included in Appendix A of the Final SEIS as a 'representative project' under the Current
16 Plan Alternative . . . These are projects that could be implemented along the corridors that comprise
17 the Current Plan Alternative regardless of whether service is already implemented along these
18 corridors. . . ." This indicates that Sound Transit was contemplating a possible stop at Point Wells.
19 Contrary to the statements made in F.55, F.58 and C.35, BSRE received a letter of support from
20 the appropriate individual (not just a "mid-level manager") in 2010 indicating that Sound Transit
21 was open to the possibility of a stop at Point Wells. In fact, the letter stated that Sound Transit's
22 interest in such a station would be increased if BSRE was willing to fund that station. BSRE has
23 unequivocally made that commitment.
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1 In addition, F.60 is not supported by the record because Douglas A. Luetjen testified on
2 May 24, 2018 that BSRE has met with “various transit agencies that included King County Metro
3 and Community Transit as well as Sound Transit to discuss transit-related issues for the
4 development.” See Douglas A. Luetjen May 24, 2018 Testimony.

5
6 In addition, BSRE has retained the firm of Shiels Oblatz Johnson, a project management
7 consultancy group in the Pacific Northwest that has specific experience working with BNSF and
8 commuter lines to get approvals for additional stops. See *id.* This shows BSRE’s diligence and
9 dedication to building a Sound Transit station at Point Wells. Furthermore, BSRE has considered
10 Sound Transit’s design guidelines in creating its design and has acted in accordance with the
11 direction received from Sound Transit, which was to wait until approvals were received before
12 pursuing a written agreement with Sound Transit. *Id.* Any Findings of Fact, Conclusions of Law
13 and rulings which state or imply that BSRE was derelict in its duties by failing to obtain a written
14 commitment from Sound Transit or another transit agency are not supported by the record, do not
15 take into account the particular facts and requirements of the transit agencies, and should be
16 reversed.
17

18 *iii. BSRE Acted Reasonably to Provide Alternative High Capacity Transit with*
19 *a Water Taxi.*

20 In order to satisfy the County’s concerns regarding high capacity transit, BSRE proposed
21 providing a water taxi between the site and the Edmonds Sound Transit station at least until an on-
22 site Sound Transit station is constructed. The Hearing Examiner’s Findings of Fact, Conclusions
23 of Law, and rulings regarding the water taxi proposal are not supported by the record and fail to
24 consider evidence provided with BSRE’s closing brief.
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Hello Councilmembers,

I am a party of record. My comments relate to pages 17-18 of BSRE's appeal.

BSRE will try anything to try to qualify for the 90-foot height bonus. Its appeal says that it might employ water taxis to satisfy the high capacity transit requirement.

There are no water taxis there now, nor is it likely that there ever will be. As the last speaker said, the high capacity transit must be there now. The Code does not contain the word "planned."

And even some sort of planned water taxi service could suffice, BSRE presented no evidence that its so-called plans have been approved by anyone. The Hearing Examiner easily dismissed the water taxi idea, saying that, "Little to no evidence was presented beyond a high level conclusion; it was a conceptual fall back plan without details."

Now let me discuss a more fundamental reason why BSRE's water taxi idea fails. BSRE assumes that water taxis are considered high capacity transit, but that's not the case.

The County's 2010 Comprehensive Plan, at page E-8, defines "high capacity transit" as "any transit technology that operates on *separate right-of-way* and functions to move large numbers of passengers at high speeds, such as busways, light rail, and commuter rail." Water taxis are not mentioned. Water taxis are not high capacity transit. They certainly do not operate on a "separate right-of-way."

Nor are water taxis considered high capacity transit under the 2010 version of Code section 30.34A.085, which includes as high capacity transit only "routes such as light rail or commuter rail lines or regional express bus routes or transit corridors that contain multiple bus routes." There is no mention of water taxis. They are not high capacity transit.

In contrast, today's Code has a definition of high capacity transit in Section 30.91H.108 that includes "passenger-only ferries designed to carry high volumes of passengers." Even if BSRE could rely on today's Code, which it cannot, BSRE has provided no details about whether its conceptual water taxis constitute passenger-only ferries, or whether its water taxis would carry the requisite high volume of passengers.

Because water taxis are not high capacity transit, and are a totally speculative and conceptual fallback plan for which approvals have not been secured nor are they likely to be secured, the Hearing Examiner was correct in concluding that BSRE's water taxi concept failed to satisfy the high capacity transit requirement to qualify for the 90-foot building height bonus.

Please affirm the Hearing Examiner's denial of BSRE's applications. Twenty-one of BSRE's 46 proposed buildings are taller than 90 feet, and that's a substantial conflict with County Code.

Thank you,

Barbara Twaddell

1 In addition, F.60 is not supported by the record because Douglas A. Luetjen testified on
2 May 24, 2018 that BSRE has met with “various transit agencies that included King County Metro
3 and Community Transit as well as Sound Transit to discuss transit-related issues for the
4 development.” *See* Douglas A. Luetjen May 24, 2018 Testimony.

5
6 In addition, BSRE has retained the firm of Shiels Oblatz Johnson, a project management
7 consultancy group in the Pacific Northwest that has specific experience working with BNSF and
8 commuter lines to get approvals for additional stops. *See id.* This shows BSRE’s diligence and
9 dedication to building a Sound Transit station at Point Wells. Furthermore, BSRE has considered
10 Sound Transit’s design guidelines in creating its design and has acted in accordance with the
11 direction received from Sound Transit, which was to wait until approvals were received before
12 pursuing a written agreement with Sound Transit. *Id.* Any Findings of Fact, Conclusions of Law
13 and rulings which state or imply that BSRE was derelict in its duties by failing to obtain a written
14 commitment from Sound Transit or another transit agency are not supported by the record, do not
15 take into account the particular facts and requirements of the transit agencies, and should be
16 reversed.
17

18 *iii. BSRE Acted Reasonably to Provide Alternative High Capacity Transit with*
19 *a Water Taxi.*

20 In order to satisfy the County’s concerns regarding high capacity transit, BSRE proposed
21 providing a water taxi between the site and the Edmonds Sound Transit station at least until an on-
22 site Sound Transit station is constructed. The Hearing Examiner’s Findings of Fact, Conclusions
23 of Law, and rulings regarding the water taxi proposal are not supported by the record and fail to
24 consider evidence provided with BSRE’s closing brief.
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1 In F.63, the Hearing Examiner stated that operating a water taxi would be prohibited by
2 the Shoreline Management Master Program because it is a commercial use and BSRE has not
3 applied for a conditional use permit. However, neither of these statements is supported by the
4 record. Randy Middaugh testified that the water taxi would not be a prohibited use if it was free.
5 See Randy Middaugh May 22, 2018 Testimony. Instead, he said it would simply require a
6 conditional use permit, which would be reviewed by the Department of Ecology. *Id.* BSRE
7 submitted such a conditional use permit with its closing brief. See Exhibit Q-4, Appendix 1.
8 Therefore, F.64, C.38, C.39, C.78 and ruling 4, should be reversed.
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10 As stated in F.62, the pier at Point Wells is subject to an aquatic lands lease from the
11 Washington Department of Natural Resources (the "DNR"). In its April Recommendation and
12 May Recommendation, the County did not include any allegations with respect to BSRE's dealings
13 with DNR. For this reason, BSRE did not submit any evidence into the record regarding BSRE's
14 contacts with DNR. However, this does not mean BSRE has not had discussions with DNR about
15 the use of the pier. Rather, BSRE has had substantial contact with DNR over the years. See
16 Declaration of Douglas A. Luetjen, submitted as Addendum 9 to the Motion for
17 Reconsideration/Clarification. As recently as August of 2017, BSRE was advised by DNR to wait
18 to modify the lease until after the urban center has been approved so as to allow the industrial uses
19 to continue in the meantime. *Id.* BSRE's interactions and negotiations with DNR were not part
20 of the hearing and thus this evidence could not reasonably be expected to have been provided at
21 the time of the hearing. All Findings of Fact, Conclusions of Law and rulings related to BSRE's
22 water taxi proposal, including, but not limited to, F.62, F.63, C.38, C.39, C.78 and ruling 4, should
23 therefore be reversed and revised accordingly.
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Hello Councilmembers,

I am a party of record. My comments relate to page 19 of BSRE's appeal.

Please look at the Code section previously handed to you by speaker 2. There's a second requirement to qualify for the Code's 90-foot height bonus. The additional height must be "documented to be necessary or desirable." BSRE fails to satisfy it.

As the Examiner said, at paragraph C.37, "BSRE's bare proposal for buildings twice the permitted height does not demonstrate either necessity or desirability." The additional height must be "for some reason other than the applicant's desire. The record lacks any evidence to ... that the additional height is necessary or desirable from a public, aesthetic, planning, or transportation standpoint."

BSRE objects, saying that the Examiner should have never raised the "necessary or desirable" issue because it was not addressed by the parties. This is nonsense. One of the primary responsibilities of judges and Hearing Examiners is to interpret the law and then apply it to the facts. It would have been an error for the Examiner not to do so.

BSRE next argues that the Examiner should not have addressed the "necessary or desirable" issue until after a view analysis in the project EIS had been completed. This is more nonsense. The Code doesn't say that an EIS is a precondition to determining whether a height increase is necessary or desirable. And besides, it's hard to imagine that a view analysis would dictate that the proposed buildings at Point Wells should be taller, rather than shorter.

Lastly, BSRE argues that since neither party addressed whether the additional height is necessary or desirable, the record is silent on the issue. Not true.

In 2015, BSRE submitted an alternate site plan with all buildings no taller than 90 feet. Its alternate site plan shows that buildings taller than 90 feet are not necessary.

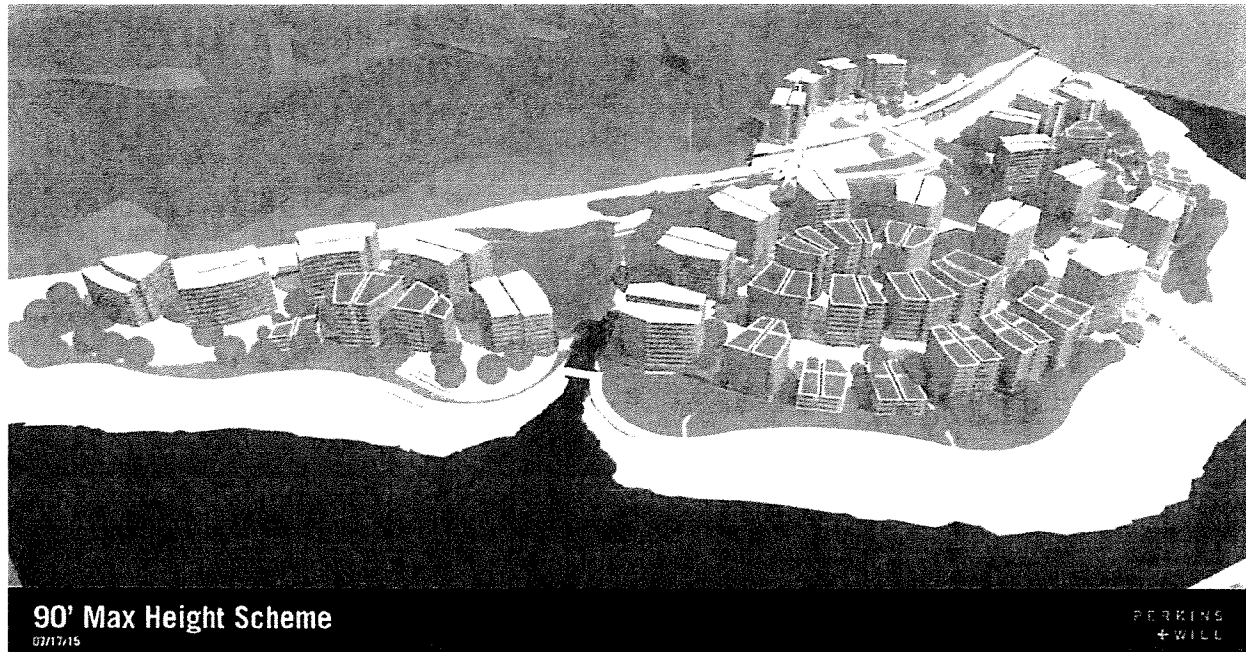
Please look at pages 2-3 of my handout, containing excerpts from Exhibit I-222, a document that Mr. McCormick submitted to the Design Review Board on March 13, 2018. Page 2 is the alternate site plan submitted by BSRE in 2015. And page 3 is an accompanying table submitted by BSRE showing the number of stories for each building (none taller than 9 stories), the number of units per building, floor area, etc.

BSRE might also claim that it needs the tall buildings to satisfy the Code's minimum floor area ratio. Not so. The table on page 3 shows that with all buildings no taller than 90 feet, the floor area is about 3 million square feet, which is greater than the site area of 2.6 million feet, yielding a floor area ratio of about 1.15, well in excess of the Code's minimum.

Buildings taller than 90 feet at Point Wells are not necessary or desirable, and thus are not permitted. Because 21 proposed buildings are taller than 90 feet, that's a substantial Code conflict. The Examiner correctly denied BSRE's applications. Please affirm the denial.

Thank you,
Robert Hauck

As explained in Exhibit I-222, a document that Mr. McCormick submitted to the Design Review Board on March 13, 2018, the below schematic is an alternate site plan submitted by BSRE in 2015. It was submitted to demonstrate what the site plan would look like if building heights were limited to 90 feet.



BUILDING	NUMBER OF STORIES	FLOOR PLATE HEIGHT	A. AREA PER UNIT MODIFIER	B. SUPPORT ADJUSTMENT % MODIFIER	ROOM CALC PER FLOOR (BEFORE ROUNDING)	# OF UNITS DETERMINED BY MODIFIERS	TOTAL FLOOR AREA (SF)		
NV-T1	9	10	850	15	9.7	87	85335.75		
NV-T2	9	10	850	15	12.4	112	109089		
NV-T3	9	10	850	15	12.9	116	113487.75		
NV-T4	9	10	850	15	13.0	117	114367.5		
NV-T5	9	10	850	15	12.9	116	113487.75		
NV-L1	3	10	850	15	5.3	16	15542.25		
NV-L2	9	10	850	15	9.2	83	80937	TOTAL NV UNIT COUNT	TOTAL NV FLOOR AREA
NV-L3	9	10	850	15	6.3	55	53664.75	702	685913.75
CV-T1	9	10	850	15	11.0	99	96772.5		
CV-T2	9	10	850	15	11.0	99	96772.5		
CV-T3	9	10	850	15	11.0	99	96772.5		
CV-T4	9	10	850	15	11.0	99	96772.5		
CV-T5	9	10	850	15	11.0	99	96772.5		
CV-T6	9	10	850	15	11.0	99	96772.5		
CV-T7	9	10	850	15	11.0	99	96772.5		
CV-L1	9	10	850	15	7.2	65	63342		
CV-L2	3	10	850	15	7.2	22	21114		
CV-L3	3	10	850	15	7.2	22	21114		
CV-L4	9	10	850	15	7.2	65	63342		
CV-L5	9	10	850	15	7.2	65	63342		
CV-L6	9	10	850	15	8.1	73	71259.75		
CV-L7	9	10	850	15	8.6	77	75658.5		
CV-L8	9	10	850	15	7.5	68	65981.25		
CV-L9	9	10	850	15	7.4	67	65101.5		
CV-L10	9	10	850	15	8.1	73	71259.75		
CV-L11	9	10	850	15	6.3	57	55424.25	TOTAL CV UNIT COUNT	TOTAL CV FLOOR AREA
CV-L12	9	10	850	15	5.5	50	48386.25	1454	1418157
CV-L13	9	10	850	15	6.3	57	55424.25		
SV-T1	9	10	850	15	8.1	73	71259.75		
SV-T2	9	10	850	15	8.1	73	71259.75		
SV-T3	9	10	850	15	8.1	73	71259.75		
SV-T4	9	10	850	15	8.1	73	71259.75		
SV-T5	9	10	850	15	8.1	73	71259.75		
SV-T6	9	10	850	15	8.1	73	71259.75		
SV-L1	9	10	850	15	4.6	41	40468.5		
SV-L2	9	10	850	15	5.9	53	51905.25		
SV-L3	3	10	850	15	6.0	18	17595		
SV-L4	3	10	850	15	5.9	18	17301.75		
SV-L5	3	10	850	15	4.6	14	13489.5		
SV-L6	3	10	850	15	7.5	23	21993.75	TOTAL SV UNIT COUNT	TOTAL SV FLOOR AREA
SV-L7	9	10	850	15	7.5	68	65981.25	673	656793.5
UP-T1	9	10	850	15	6.3	57	55424.25		
UP-T2	9	10	850	15	5.7	51	50145.75		
UP-T3	9	10	850	15	5.7	51	50145.75	TOTAL UP UNIT COUNT	TOTAL UP FLOOR AREA
UP-T4	9	10	850	15	5.4	49	47506.5	208	203222.25
								3037	2963584.5

Hello Councilmembers,

I am a party of record. My comments relate to pages 6-7 of BSRE's appeal.

BSRE submitted its applications in 2011. It claims that it is vested to the zoning and land use control ordinances in effect at that time.

Under County Code section 30.34A.040(2)(a), there is a very low height limit for buildings proposed to be located within 180 feet of a neighboring residential property that is zoned R-9600. For instance, a building that is 80 feet from the adjacent property cannot be taller than 40 feet.

The Hearing Examiner concluded that this Code section applies to the buildings in BSRE's proposed Urban Plaza. And he stated in paragraph F.49, that "all of the buildings in the Urban Plaza exceed the height limits."

BSRE appeals, saying the Code section should not apply because the adjacent residential property is zoned R-14,500, but R-9600 is the least dense zoning that the Code section applies to.

At the time BSRE filed its urban center application in 2011, the property adjacent to the Urban Plaza was located in unincorporated Snohomish County and zoned R- 9,600. Years later, the adjacent property was annexed by Woodway and zoned R-14,500.

BSRE has claimed vesting to the zoning and land use control ordinances in effect at the time it submitted its applications in 2011. As a result, because the adjacent residential property was zoned R-9,600 when BSRE applied in 2011, that zoning is the applicable zoning for purposes of reviewing BSRE's applications and determining BSRE's compliance with County Code.

As I mentioned earlier, there are very strict height limits in Code section 30.34A.040(2)(a) that apply when adjacent residential property is zoned R-9,600.

Because the residential property adjacent to the proposed Urban Plaza was zoned R-9,600 in 2011, BSRE's vesting date, the Code's very strict height limits apply.

The Hearing Examiner correctly found that Code section 30.34A.040(2)(a) applies, and that all of the buildings in the Urban Plaza exceed the height limits.

Please deny BSRE's appeal. And please affirm the Hearing Examiner's findings in paragraphs F.44, 45, 46, 47, 48, and 49.

Thank you,

Karen Briggs

II. EVIDENCE RELIED UPON

BSRE relies on the permit application hearing record, including witness testimony and documentary exhibits, and the permit application record.

III. ARGUMENT AND LEGAL AUTHORITY

A. Standard for Appeal

SCC 30.72.080(2) establishes the grounds for an appeal of a Type 2 decision:

- (a) The decision exceeded the hearing examiner's jurisdiction;
- (b) The hearing examiner failed to follow the applicable procedure in reaching the decision;
- (c) The hearing examiner committed an error of law; or
- (d) The hearing examiner's findings, conclusions and/or conditions are not supported by the record.

BSRE seeks review of the Decision based on grounds (b), (c), and (d) above.

B. The Hearing Examiner Committed an Error of Law with Respect to All Findings, Conclusions and Rulings Related to the Residential Setback.

BSRE submits that all findings, conclusions and rulings related to the residential setback, including, but not limited to, F.49, C.26, C.78, and Decision 4, reflect an error of law and should be reversed on appeal. SCC 30.34A.040(2)(a) provides:

Buildings or portions of buildings that are located within 180 feet of adjacent R-9600, R-8400, R-7200, T or LDMR zoning must be scaled down and limited in building height to a height that represents half the distance the building or that portion of the building is located from the adjacent R-9600, R-8400, R-7200, T or LDMR zoning line (e.g. – a building or portion of a building that is 90 feet from R-9600, R-8400, R-7200, T or LDMR zoning may not exceed 45 feet in height).

The effect of SCC 30.34A.040(2)(a) is to limit the height of buildings located adjacent to specific residential zones. PDS, and the Hearing Examiner in its Decision, have determined that the

1 buildings in the Urban Plaza must be restricted in height because they are located adjacent to
2 residential zones.

3 However, as noted in F.45, the buildings proposed to be built in the Urban Plaza are
4 adjacent to property which is zoned R-14,500 and Urban Restricted. There is no property which
5 is zoned R-9600, R-7200, T or LDMR adjacent to the buildings proposed to be built by BSRE.
6 Therefore, the plain language of SCC 30.34A.040(2)(a) makes this statute inapplicable to this
7 project. *See Bravo v. Dolsen Cos.*, 125 Wn.2d 745, 752, 888 P.2d 147 (1995) (holding that where
8 statutory language is “plan, free from ambiguity and devoid of uncertainty, there is no room for
9 construction because the legislative intention derives solely from the language of the statute”).
10 The statute does not include any language which would make it applicable to “similar” or
11 “equivalent” zoning designations. Because the buildings proposed to be constructed in the Urban
12 Plaza are not located adjacent to any R-9600, R-7200, T or LDMR zones, SCC 30.34A.040(2)(a)
13 does not apply and no residential setback is required.
14
15

16 Thus, all findings, conclusions and rulings in the Decision which state or imply that SCC
17 30.34A.040(2)(a) is applicable or that a variance is required because of a residential setback reflect
18 an error of law and should be reversed. There can be no substantial conflict with SCC
19 30.34A.040(2)(a) where it does not apply.
20

21 In addition, Finding F.50 should also be reversed because BSRE included the two service
22 buildings in the variance request, as submitted to the Hearing Examiner with its Motion for
23 Reconsideration/Clarification. *See Exhibit R-1, Addendum 2.* SCC 30.72.065(f) specifically
24 allows an applicant to propose changes to the application in response to deficiencies identified in
25 the Decision. The Hearing Examiner ignored all changes proposed by the applicant, thereby
26 committing an error of law and failing to follow the applicable procedures.
27

Hello Councilmembers,

I am a party of record. My comments relate to pages 27-30 of BSRE's appeal.

Under Washington law, a developer vests to certain "land use control" regulations in effect at the time the developer submits its applications. Land use control regulations are ones that control zoning, building heights, minimum or maximum density, required setbacks, and so on.

In its appeal, BSRE argues that it is vested to Code section 30.34A.180(2)(f), which existed in 2011, but which has since been repealed. That section authorizes the Hearing Examiner to deny an Urban Center application "without prejudice," and permits a developer to then reapply as an Urban Center without loss of vesting. The Hearing Examiner correctly rejected BSRE's argument, concluding that while vesting may apply to land use control ordinances, it doesn't apply to the Hearing Examiner's jurisdiction and authority.

BSRE has cited no legal authority directly on point to support its argument that the vested rights doctrine applies to a procedural rule dealing with a hearing examiner's jurisdiction and authority. A procedural rule is not a land use control regulation to which vesting may apply. And the fact that BSRE may have drafted the Code's text, and lobbied for it, does not make it any less a procedural rule for which vesting does not apply. BSRE's appeal is without merit.

There is one other matter.

By appealing the vesting issue, BSRE has opened the door to a reexamination of the Examiner's decision to deny BSRE's applications "without prejudice." As noted in Footnote 19 of Exhibit R-3, the Hearing Examiner understood that the only difference between a denial "without prejudice" and an outright denial, sometimes called a denial "with prejudice," is that an outright denial results in a one-year prohibition on re-applying, while denial "without prejudice" does not trigger a one-year bar. A relatively modest difference.

But if the repealed Code section were to apply as BSRE wants, the difference would become huge—a "without prejudice" ruling would enable BSRE to reapply as an Urban Center without loss of vesting under outdated rules.

BSRE wants to resurrect the repealed Code section by claiming a vested right, and then use the Examiner's "without prejudice" ruling to reapply as an Urban Center without loss of vesting. Please reject both prongs of BSRE's scheme by doing two things: (1) affirm that BSRE obtains no rights under the repealed procedural Code section; and (2) reverse the Examiner's "without prejudice" ruling and instead deny BSRE's applications outright. Alternatively, I ask that you remand the matter to the Hearing Examiner with directions to reexamine whether his "without prejudice" ruling is appropriate under the circumstances I have been discussing.

Thank you,

Jack Malek

1 why SCC 30.34A.180 [2007] provides an applicant with the opportunity to revise and re-submit
2 its applications following an initial denial:

3 The hearing examiner may deny an urban center development
4 application without prejudice pursuant to SCC 30.72.060. If denied
5 without prejudice, the application may be reactivated under the
6 original project number without additional filing fees or loss of
7 project vesting if a revised application is submitted within six
8 months of the date of the hearing examiner's decision. In all other
9 cases a new application shall be required.

10 SCC 30.34A.180(2)(f) [2007]. *See* Section I *infra*. This project is by far the most complicated
11 project that Snohomish County has seen (*see* Ryan Countryman's May 24, 2018 Testimony),
12 making the need for multiple revisions even greater. BSRE has shown it is motivated to resolve
13 all issues raised by PDS and will work diligently to do so.

14 For all of the above cited reasons, ruling 3 should be reversed, BSRE should be granted an
15 extension and the parties should be directed to proceed with the draft environmental impact
16 statement.

17 **H. The Hearing Examiner Committed an Error of Law with Respect to Whether
18 BSRE is Entitled to Re-File Pursuant to SCC 30.34A.180 [2007].**

19 The Code expressly contemplates having a Hearing Examiner reconsider its decisions
20 where changes are made to an application to address deficiencies identified in a Hearing
21 Examiner's decision. *See* SCC 30.72.065(f). This reflects an on-going process in which an
22 application gradually evolves to come into full code compliance. This is reflected by the fact that
23 the Hearing Examiner's Decision was without prejudice. While the Hearing Examiner
24 appropriately determined that the Decision was without prejudice, the Hearing Examiner
25 committed an error of law by finding that SCC 30.34A.180(2)(f) [2007] was inapplicable simply
26 because the subject language had been replaced by subsequent code revisions which deleted the
27

1 “without prejudice” language. The Hearing Examiner failed to recognize the fact that BSRE’s
2 application was vested to the code in place on the date of its application. In fact, the Point Wells
3 page of PDS’s website explicitly includes the following provision as among those applicable to
4 this application. The vested code provision is set forth in SCC 30.34A.180(2)(f) [2007] which
5 provides in pertinent part:
6

7 The hearing examiner may deny an urban center development
8 application without prejudice pursuant to SCC 30.72.060. If denied
9 without prejudice, the application may be reactivated under the
10 original project number without additional filing fees or loss of
11 project vesting if a revised application is submitted within six
12 months of the date of the hearing examiner’s decision. In all other
13 cases a new application shall be required.

14 BSRE is particularly familiar with this code provision because BSRE suggested this verbiage be
15 included in the Urban Center Code at the time of its initial consideration. The goal was to address
16 this specific situation. PDS and the Snohomish County Council agreed and this provision was
17 included in the code when adopted.

18 Washington has adopted the “vested rights doctrine” with respect to land use applications.
19 See *Noble Manor v. Pierce County*, 133 Wn.2d 269, 943 P.2d 1378 (1997). “[V]esting” refers
20 generally to the notion that a land use application, under the proper conditions, will be considered
21 only under the land use statutes and ordinances in effect at the time of the application’s
22 submission.” *Id.* at 275. The Final Legislative Report of the bill enacting RCW 58.17.033 further
23 clarifies the scope of Washington’s vesting rights: “The doctrine provides that a party filing a
24 timely and sufficiently complete building permit application obtains a vested right to have that
25 application processed according to zoning, land use and building ordinances in effect at the time
26 of the application.” “The purpose of the vested rights doctrine is to provide a measure of certainty
27

1 to developers and to protect their expectations against fluctuating land use policy.” *Noble Manor*,
2 133 Wn.2d at 278.

3 Pursuant to RCW 58.17.033(1), a land use application must be “considered under the
4 subdivision or short subdivision ordinance, and zoning or other land use control ordinances” in
5 effect at the time that the fully completed application is submitted. SCC 30.34A.180 is not a
6 subdivision or short subdivision ordinance, but it is a “land use control ordinance”. “[L]and use
7 control ordinances’ are those that exert a restraining or directing influence over land use.” *Graham*
8 *Neighborhood Ass’n v. F.G. Assocs.*, 162 Wn. App. 98, 115, 252 P.3d 898 (2011). The Code also
9 recognizes the scope of the vesting doctrine: “For the purpose of this section, ‘development
10 regulation’ means those provisions of Title 30 SCC that exercise a restraining or directing
11 influence over land, including provisions that control or affect the type, degree, or physical
12 attributes of land development or use.” SCC 30.70.300. The purpose of the vesting doctrine is to
13 allow property owners to proceed with their planned projects with certitude. *Graham*
14 *Neighborhood Ass’n*, 162 Wn. App. at 116.

17 Here, the Hearing Examiner committed an error of law by failing to recognize that the Land
18 Use Applications were vested to SCC 30.34A.180 [2007]. SCC 30.34A.180 [2007] granted
19 developers a significant property right – the right to re-submit a land use application within six (6)
20 months of a denial without prejudice, in order to have the land use application retain its vesting
21 status. This was a provision that was specifically negotiated by BSRE and the County, and is
22 directly related to and affecting property rights. Therefore, it is appropriately considered a land
23 use ordinance. Because Washington has adopted the vested rights doctrine with respect to land
24 use ordinances, and the County has further codified that doctrine, BSRE’s Land Use Applications
25 should be vested to SCC 30.34A.180 [2007], which provides that BSRE may re-submit revised
26
27

1 Land Use Applications within six (6) months of the Hearing Examiner's Decision and have those
2 Land Use Applications considered under the law in effect at the time that the Land Use
3 Applications were originally submitted in 2011.

4
5 **I. BSRE's Short Plat Application (11-101007 SP) is Unaffected by the Perceived
6 Deficiencies in the Application and Should Not Be Terminated.**

7 The Hearing Examiner failed to address BSRE's request that the Short Plat Application be
8 deemed to be excluded from the decision terminating the Land Use Applications. BSRE asserts
9 that BSRE's short plat application stands alone and is unaffected by the issues raised in the hearing
10 and in the Decision. The Hearing Examiner committed an error of law by failing to exclude
11 BSRE's short plat application from the Decision.

12 **IV. CONCLUSION**

13 Base on the foregoing, BSRE requests that the Snohomish County Council reverse the
14 Hearing Examiner's Decision and (1) deny the County's request to deny BSRE's applications
15 without an environmental impact statement, (2) grant BSRE's request for an extension, (3) find
16 that the Land Use Applications are vested to SCC 30.34A.180 [2007], and (4) reverse all Findings
17 of Fact, Conclusions of Law or rulings which relate to any of the above issues.

18 DATED this 17th day of August, 2018.

19
20
21 
22 Gary D. Huff, WSBA #6185
23 Douglas A. Luetjen, WSBA #15334
24 J. Dino Vasquez, WSBA #25533
25 Jacque E. St. Romain, WSBA #44167
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Facsimile: 206-682-7100
Email: dvasquez@karrtuttle.com
Attorneys for Appellant

Hello Councilmembers,

I am a party of record. My comments relate to pages 4-5 of BSRE's Sept. 7, 2018, supplemental filing.

As we just heard, BSRE asserts that it is vested to the repealed procedural rule giving the hearing examiner the authority to deny an Urban Center application without prejudice, and giving the applicant the right to reapply without loss of vesting. The Examiner concluded he lacked authority to use this repealed procedural rule in denying BSRE's applications. So BSRE must reapply under today's zoning and development regulations. BSRE doesn't like that.

So it is not surprising that BSRE grasps for one more straw in its Sept. 7 supplemental filing, falsely alleging at page 4, line 12, that the County has "*consistently*" said that BSRE's applications are vested to the repealed procedural rule, so the Examiner should have used that rule in denying BSRE's applications.

BSRE is lying to you. Neither PDS nor anyone else has ever said such thing orally or in writing, let alone "*consistently*" so. Where's the document that says this? There is none.

PDS is charged with reviewing BSRE's project for compliance with County Code—provisions like building heights, setbacks, parking, and so on. As stated on page 79 of PDS's October 2017 Review Completion Letter, its review is per the Code in effect when BSRE submitted its Urban Center application, that is, the March 4, 2011, version of the Code.

In support of its convoluted contention, BSRE first cites PDS's statement from page 79; namely, that PDS's review of BSRE's applications is per the 2011 version of the Code. This is apples and oranges. A statement about what rules PDS uses to evaluate BSRE's Code compliance has nothing whatsoever to do with whether BSRE is vested to the repealed procedural rule conferring Hearing Examiner authority. There is no reason that PDS would ever proffer an opinion on the subject. Its jurisdiction is reviewing applications for Code compliance. Next, BSRE points to how PDS's Review Completion Letter summarized and reproduced the entire 2011 Urban Center Code, including the repealed procedural rule. This, BSRE contends, in a cobbling together of unconnected snippets, is proof that PDS has "*consistently*" told BSRE that it is vested to the repealed procedural rule.

I trust that you will recognize and reject BSRE's contention for what it is. It is a made-up sham. A desperate grasping at straws by BSRE.

Please reject BSRE's appeal in its entirety. And in your motion rejecting BSRE's appeal and affirming the Hearing Examiner's decision, please include a statement specifically saying that Council has determined that BSRE is not vested to the repealed procedural rule.

Thank you,

John John

1 therefore will not do so.”

2 *Id.* By stating that SCC 30.34A.180 (2007) had been repealed, the Hearing Examiner failed to
3 recognize BSRE’s vested status. The Hearing Examiner made this decision without permitting the
4 parties to provide additional briefing on BSRE’s vested status and without asking PDS about
5 whether it considers BSRE to be vested to SCC 30.34A.180(2)(f) (2007).
6

7 Regardless of the Hearing Examiner’s statement about SCC 30.34A.180(2)(f) (2007)
8 having been repealed, the Hearing Examiner expressly stated that he was denying the Land Use
9 Applications without prejudice pursuant to SCC 30.70.060, which is the type of denial afforded
10 protection under SCC 30.34A.180(2)(f) (2007).
11

12 *iii. The County Has Consistently Held that the Land Use Applications Are Vested
 to SCC 30.34A.180(2)(f) (2007).*

13 In its arguments before the Supreme Court in *Woodway* and in its review letters, PDS has
14 consistently recognized BSRE’s vested status. In its October 6, 2017 review letter (the “October
15 2017 Letter”), PDS stated: “Review of Chapter 30.34A SCC refers to the Land Use permit for an
16 urban center site plan, 11-101457 LU, unless otherwise noted. The review is per the code in effect
17 when 11-101457 LU was submitted, i.e. the March 4, 2011, version of code, unless explicitly
18 identified otherwise.” *See* Exhibit K-31, p. 79. The October 2017 Letter goes on to list this specific
19 provision, stating: “**Former SCC 30.34A.180 . . . Subsection (2)(f)** allows the Hearing Examiner
20 to deny the project without prejudice and, if this happens, allows the applicant to reactivate the
21 project.” *Id.* at p. 98 (emphasis in original). In addition, PDS set forth the entire provision of the
22 former SCC 30.34A.180 (2007) in the October 2017 Letter in PDS’s list of code provisions to
23 which the Land Use Applications are vested. *See id.* at pp. 245-48. This is consistent with the
24 Supreme Court’s ruling in *Woodway*: “BSRE’s development rights vested to the plans and
25
26
27

1 regulations in place at the time it submitted its permit applications.” *Woodway*, 180 Wn.2d at 180-
2 81.

3 iv. *The County Should Be Estopped From Now Arguing that the Land Use*
4 *Applications are Not Vested to SCC 30.34A.180(2)(f).*

5 Because the County has consistently stated that BSRE’s Land Use Applications are vested
6 to SCC 30.34A.180(2)(f) in its review letters and before the Supreme Court, the County should be
7 estopped from now arguing that SCC 30.34A.180 (2007) does not apply to the Land Use
8 Applications.

9 Equitable estoppel exists where there is (1) an admission, statement, or act inconsistent
10 with the claim afterward asserted; (2) action by another in reliance upon that admission, statement
11 or act; and (3) injury to the relying party from allowing the first party to contradict or repudiate
12 the prior act, statement or admission. *Shafer v. State*, 83 Wn.2d 618, 623, 521 P.2d 736 (1974).
13 The doctrine of equitable estoppel can be applied against a county. *See, e.g., Lybbert v. Grant*
14 *County*, 93 Wn. App. 627, 969 P.2d 1112 (1999).

15 Here, the County has made multiple representations that BSRE is vested to the entire Urban
16 Center Code, including SCC 30.34A.180 (2007). BSRE has relied on those statements by
17 continuing to pursue its Land Use Applications and by requesting that the Hearing Examiner deny
18 the Land Use Applications without prejudice. There is no question that BSRE will be harmed by
19 the County changing its position now in arguing that BSRE is not vested to SCC 30.34A.180
20 (2007). Therefore, the County should be estopped from arguing that the Land Use Applications
21 are not vested to SCC 30.34A.180(2)(f) (2007).

22 v. *SCC 30.34A.180 (2007) is a Land Use Ordinance to Which Applications Vest.*

23 The County Code and Washington State law expressly provide that applications are vested
24
25
26
27

Hello Councilmembers,

I am a party of record. My comments relate to pages 23-27 of BSRE's appeal.

I'm going to talk about BSRE's lack of diligence, specifically its dilatory tactics with the second access road. Citing BSRE's lack of diligence and substantial Code conflicts, the Examiner was correct in refusing to extend BSRE's June 30, 2018 application expiration date. BSRE appeals this.

BSRE submitted its applications in 2011 without a second access road. BSRE knew what the County rules required. It knew that if more than 250 average daily trips are generated, a second road is required. Yet, though its development was projected to generate over 10,000 average daily trips, it ignored the second road requirement.

The 2014 EIS Scoping Summary alerted BSRE that the EIS must "evaluate the potential environmental impacts of providing a secondary access road." By year-end 2014, there were still no plans for a second road.

The following year, instead of submitting plans for a second road, BSRE tried to wiggle out of the requirement. In a 2015 report, Exhibit C-21, it said:

"it appears that the provision of a secondary access to the site to provide for public safety and welfare, whether for public vehicular access or restricted to emergency and possibly pedestrian use, is not warranted. The project design includes appropriate measures to allow for the safe, efficient circulation of and access for vehicles, including emergency vehicles, within, to and from the development."

BSRE, being a diligent developer, was satisfied that a single access road would be good enough, safe enough, for the expected 6,000 residents plus thousands of visitors, workers, and customers. That single road, Richmond Beach Drive, is a narrow, winding 2-lane road through a residential neighborhood, a road that is subject to being blocked by fallen trees.

PDS promptly pushed back, telling BSRE that the County does not concur with BSRE's conclusion that a second access "is not warranted." And in 2016, PDS spoke again, telling BSRE in no uncertain terms that a second road was required. Finally, more than six years later, BSRE submitted plans for a second road in 2017, albeit incomplete and noncompliant plans. That's not diligent, that's dilatory.

But to this day BSRE has failed to show that its second access road satisfies the safety and other requirements in the County's landslide hazard regulations. The Hearing Examiner concluded, at page 26 of his decision, that "substantial conflicts with county code remain regarding the secondary access road." And BSRE has other problems. It does not own all the property necessary to build the second road.

Please affirm the Hearing Examiner's decision denying BSRE's applications, and refusing to extend the June 30, 2018 application expiration date. It is obvious that BSRE has not been diligent about the second road. And that's just one example. There are many more.

Thank you,

Domenick Dellino

1 The geotechnical report, landslide hazard deviation requests, and subsurface conditions
2 report, with their respective addenda, provided sufficient information to determine that the project
3 is feasible. The project is not yet at a buildable stage, which means that there will be additional
4 time to provide further details and conduct further tests, if necessary. This project must still go
5 through the environmental impact statement preparation, which allows ample opportunity for any
6 required design changes to be made.
7

8 It is an error of law to find a substantial conflict with the code where a deviation request is
9 pending. Unless and until the deviation requests are denied, there is reasonable doubt that the
10 proposal is in substantial conflict with SCC 30.62B.320 and .340. If a project with a pending
11 deviation request is considered to be in substantial conflict with the code, provisions allowing for
12 deviation requests would be directly in conflict with the statute allowing premature denial.
13

14 BSRE provided landslide hazard deviation requests, geotechnical reports, and subsurface
15 condition reports which did not substantially conflict with the Snohomish County Code and
16 therefore the Findings of Fact, Conclusions of Law and rulings related to the landslide hazard areas
17 should be revised accordingly. If the County or the Hearing Examiner believes additional work is
18 necessary to show compliance with any applicable provision, then it would be appropriate to
19 condition any future approvals on obtaining the deviation and any necessary approvals for the
20 secondary access road. The Decision failed to recognize that additional revisions will be made as
21 the environmental review continues and that conditions to approval would be appropriate.
22

23 **G. BSRE's Request for an Extension Should be Granted.**

24 The Findings of Fact, Conclusions of Law, and rulings related to BSRE's actions since
25 April 2013 and related to whether BSRE should be granted an extension, including, but not limited
26 to, F.19, F.10, F.21, F.24, F.27, F.31, F.34, F.32, C.12, C.13, C.14, C.19, C.20, C.21, C.22, C.53,
27

1 C.69, C.78, C.79, ruling 3 and ruling 4, are not supported by the evidence. In addition, the Hearing
2 Examiner failed to follow the applicable procedures by failing to consider the changes proposed
3 by BSRE in response to the Decision.

4 A number of these findings are not supported by the record and should be revised: Nothing
5 in the record indicates that BSRE proposed a transportation corridor study on February 2, 2014,
6 and, in fact, BSRE never proposed a transportation corridor study (F.9). Instead, as testified to by
7 Kirk Harris on May 24, 2018, BSRE entered into a memorandum of understanding with Shoreline
8 regarding how a study would be conducted. *See* Kirk Harris May 24, 2018 Testimony. BSRE and
9 Shoreline conducted seven public meetings (F.10). Exhibit P-18. BSRE continued working with
10 Shoreline on traffic issues beyond April 20, 2015 (F.14). *See id.*; Kirk Harris May 24, 2018
11 Testimony.
12

13
14 Contrary to the Hearing Examiner's Finding, the County's March 31, 2016 letter granting
15 BSRE an extension does not state that further extensions will only be granted in "extraordinary
16 circumstances." Nor does it state that "the applications could be heard by the Hearing Examiner
17 if the alleged deficiencies were not remedied, though PDS would recommend denial" (F.21). *See*
18 Exhibit K-13. The County's letter on October 6, 2017, did not discuss further extensions at all.
19 Nor did it state that further extensions would only be granted in "extraordinary circumstances"
20 (F.31). *See* Exhibit K-32. F.32 mischaracterizes the meeting between the County and BSRE on
21 November 13, 2017: during that meeting, the County, including its legal counsel, assured BSRE
22 that there was no reason that another extension would be forthcoming, acknowledged that BSRE
23 could not meet the January 8, 2018 deadline (which the County admitted was not a "deadline" but
24 instead merely a "target"), and advised BSRE to submit a letter stating the date by which it would
25 be able to provide the necessary information. *See* Douglas A. Luetjen May 24, 2018 Testimony;
26
27

1 *see also* Exhibit P-13 (Ryan Countryman’s notes show clearly that BSRE asked when the
2 extension request would need to be submitted).

3 In addition to the above inaccuracies, the Hearing Examiner failed to note in F.27 that the
4 County’s May 2, 2017, letter specifically stated, “As the applicant, if you wish to request a further
5 suspension of the application expiration period pursuant to the above-mentioned Code provision,
6 you should make a written request to PDS prior to May 30, 2018, in order for the PDS director to
7 have time to evaluate the request.” Exhibit K-19. Not only did the County not indicate that no
8 further extensions would be forthcoming, the County also provided a date by which the next
9 extension must be provided – just one month before the expiration date. BSRE complied with this
10 request, submitting its extension request in January, more than five months prior to the expiration
11 date of June 30, 2018.
12

13
14 C.19 is similarly inaccurate as it fails to show that BSRE and Shoreline were negotiating
15 for years before Shoreline ceased cooperating with BSRE and determined that it would only work
16 with BSRE if Shoreline was permitted to annex Point Wells. At one point, Shoreline advised
17 BSRE that it did not have the votes on the Shoreline Council to permit Shoreline to continue
18 negotiating with BSRE. *See* Kirk Harris May 24, 2018 Testimony.
19

20 As the Hearing Examiner stated in C.11, “[a]n imminent deadline concentrates the mind
21 wonderfully.” This was certainly true for the County. The County provided more substantive
22 feedback from October 2017 through May 2018 than it had in all the time prior to that, which
23 allowed BSRE to provide the responses it did in April and May 2018. If the County had provided
24 such substantive responses earlier, then BSRE could have responded in kind. However, until
25 BSRE received the feedback from the County in its October 2017 Letter and its April and May
26 Recommendations, BSRE was unable to do the work the County deemed necessary. This is
27

1 certainly true with respect to the OHRM, which was not even raised as an issue by the County
2 until its May Recommendation, providing BSRE with no time to respond substantively before the
3 hearing. *See* Section C *supra*.

4 For these reasons, all Findings of Fact, Conclusions of Law and rulings implying or stating
5 that BSRE was dilatory in not determining the OHRM sooner, including, but not limited to, C.12,
6 C.13, C.14, C.15, C.16, C.17, C.21, C.22, C.78, and ruling 3, should be reversed. Furthermore,
7 BSRE proposed to improve Richmond Beach Drive so as to meet applicable road standards (C.18).

8 BSRE diligently worked to obtain approval from Sound Transit, but was told repeatedly
9 that Sound Transit would not consider putting a stop there until after BSRE obtained the necessary
10 approvals. *See* Douglas A. Luetjen May 24, 2018 Testimony. The letter that BSRE received in
11 2010 was the strongest commitment Sound Transit was willing to make until BSRE obtained
12 approval from Snohomish County for its urban center. *Id.* BSRE engaged consultants who are
13 experienced with working with Sound Transit and BNSF to ensure that the necessary approvals
14 will be received at the appropriate time. *Id.* BSRE took all steps available to it to show its
15 commitment to providing high capacity transit at Point Wells. *Id.* Thus, all Findings of Fact,
16 Conclusions of Law and rulings implying or stating that BSRE was dilatory in not obtaining
17 consent from Sound Transit, including, but not limited to, C.20, C.21, C.22, C.39, C.78, and ruling
18 3, should be reversed.

19 As Ryan Countryman testified on May 21, 2018, applications typically go through seven
20 or eight iterations. With a project this complex, it is understandable why multiple iterations are
21 necessary, both from the applicant's perspective as well as that of the County. Multiple reviews
22 allow both parties to ensure code compliance. This ability to fix issues is exactly why the code
23 authorizes the Examiner to reconsider his decision based on post-decision submittals. This is also
24
25
26
27

1 why SCC 30.34A.180 [2007] provides an applicant with the opportunity to revise and re-submit
2 its applications following an initial denial:

3 The hearing examiner may deny an urban center development
4 application without prejudice pursuant to SCC 30.72.060. If denied
5 without prejudice, the application may be reactivated under the
6 original project number without additional filing fees or loss of
7 project vesting if a revised application is submitted within six
 months of the date of the hearing examiner's decision. In all other
 cases a new application shall be required.

8 SCC 30.34A.180(2)(f) [2007]. *See* Section I *infra*. This project is by far the most complicated
9 project that Snohomish County has seen (*see* Ryan Countryman's May 24, 2018 Testimony),
10 making the need for multiple revisions even greater. BSRE has shown it is motivated to resolve
11 all issues raised by PDS and will work diligently to do so.

12 For all of the above cited reasons, ruling 3 should be reversed, BSRE should be granted an
13 extension and the parties should be directed to proceed with the draft environmental impact
14 statement.
15

16 **H. The Hearing Examiner Committed an Error of Law with Respect to Whether**
17 **BSRE is Entitled to Re-File Pursuant to SCC 30.34A.180 [2007].**

18 The Code expressly contemplates having a Hearing Examiner reconsider its decisions
19 where changes are made to an application to address deficiencies identified in a Hearing
20 Examiner's decision. *See* SCC 30.72.065(f). This reflects an on-going process in which an
21 application gradually evolves to come into full code compliance. This is reflected by the fact that
22 the Hearing Examiner's Decision was without prejudice. While the Hearing Examiner
23 appropriately determined that the Decision was without prejudice, the Hearing Examiner
24 committed an error of law by finding that SCC 30.34A.180(2)(f) [2007] was inapplicable simply
25 because the subject language had been replaced by subsequent code revisions which deleted the
26
27

Hello Councilmembers,

I am a party of record. My comments relate to pages 8-11 of BSRE's appeal.

Under County Code, a developer of shoreline property must ascertain its ordinary high water mark. This must be done before preparing site plans and application materials. It is used to determine the 150-foot and other shoreline buffers within which buildings are prohibited or restricted.

The Hearing Examiner concluded at paragraph C.16 that BSRE made no effort to ascertain the ordinary high water mark until March 2018. He said that waiting seven years to determine the area in which one can lawfully build is a failure of diligence at the least.

BSRE disagrees. It wants you to believe that, despite failing to determine the ordinary high water mark for seven years, it was diligent.

No, if it were diligent, BSRE would have located the ordinary high water mark before 2011 when it submitted its applications. You know, BSRE's consultants actually visited the site in 2010 and took photos showing vegetation on the shoreline, the telltale indicator of the ordinary high water mark. We know BSRE knew what to do because they located had located it for the streams on the site. So they knew what to do.

Making matters worse, BSRE improperly depicted an ordinary high water mark on the site plans it submitted in 2011. The line it improperly depicted was actually a type of average high tide, called the mean higher high water elevation, from published tidal tables.

For some of the site, the line BSRE improperly depicted was much closer to the water than the true and correct ordinary high water mark. That led to BSRE misrepresenting the 150-foot and other shoreline buffers. As BSRE admitted in its Motion for Reconsideration, for much of the southern portion of the site, the true and correct buffers are at least 50 feet farther inland than shown on BSRE's site plans. As a result, at least six of BSRE's proposed buildings are located within the restricted buffer zones.

And there's one more thing. Over the years, PDS twice asked BSRE to explain why in some places on its site plans it used the phrase "ordinary high water mark" and other places it used the phrase "mean higher high water." Despite PDS's questioning, BSRE didn't fix things. Despite the prompting, it made no effort to ascertain the ordinary high water mark. Instead, BSRE incredulously re-submitted its site plans to PDS, still with the misrepresented ordinary high water mark and shoreline buffers. BSRE has been far from diligent.

Please affirm the Hearing Examiner's denial of BSRE's applications, and his refusal to extend BSRE's application expiration date.

Thank you,

Edith Loyer Nelson

1 **C. With Respect to all Findings, Conclusions and Rulings Related to the Ordinary**
2 **High Water Mark, the Hearing Examiner Committed an Error of Law and Failed**
3 **to follow the Applicable Procedures, and the Hearing Examiner's Findings and**
4 **Conclusions were not Supported by the Record.**

5 BSRE submits that all findings, conclusions and rulings related to the Ordinary High Water
6 Mark (the "OHWM"), including, but not limited to, F.38, F.97, C.12, C.13, C.14, C.15, C.17, C.73,
7 C.74, C.75, C.78, and ruling 4 reflect an error of law and are not supported by the record. In
8 addition, the Hearing Examiner failed to follow applicable procedure, in contravention of SCC
9 30.72.065(f), by ignoring additional information and changes submitted to the Hearing Examiner
10 in response to the Decision.

11 The Hearing Examiner's Findings and Conclusions of Law which state or imply that BSRE
12 was derelict in not determining the OHWM are not supported by the record. As Gray Rand of
13 David Evans & Associates, Inc. testified on May 23, 2018, the first time that the County claimed
14 BSRE was deficient because the shoreline buffer was not determined based on the OHWM was in
15 its May Recommendation. Exhibit N-2. There, for the first time, the County stated,

16 The 200-foot shoreline jurisdiction is not correctly depicted on plans
17 (see, e.g., sheets Ex-2 & C-010). The Mean Higher High Water
18 (MHHW) was used rather than the Ordinary High Water Mark
19 (OHWM) for determining the landward extend [sic] of shoreline
20 jurisdiction. This may affect limitations on development activities
21 occurring within shoreline jurisdiction such as building heights.

22 Ex. N-2, p. 19. In its April 17, 2018 Staff Recommendation (the "April Recommendation"), sent
23 just two weeks prior to the May Recommendation, the County mentioned no such deficiency.
24 Exhibit N-1. In addition, the October 2017 Letter, only made two comments specific to the
25 OHWM:

26 Urban Center Comment (s): Sheets A-050 and 051 indicate location
27 of an Ordinary High Water Line along the shoreline. Sheets C-201

1 – 203 indicate location of a Line Mean Higher High Water along the
2 shoreline. Do these terms represent the same line?

3 Ex. K-31, p. 24.

4 PDS notes that the drawings for the Urban Center Submittal from
5 March 4, 2011, make interchangeable use of the terms OHWM and
6 Mean Higher High Water (MHHW) (underline added by PDS).
7 Some pages show OHWM and others show MHHW. This latter
8 term, appears to be intended to refer to Mean High Higher Tide
9 (MHHT), which is synonymous with OHWM at salt water locations
per RCW 90.58.030(2)(c). For clarity, when there are revisions to
the application for other reasons, please update the pages that refer
to MHHW so that they refer to either MHHT or OHWM.”

10 Ex. K-31, p. 115 (emphasis in original). The first comment, on page 24, simply requested
11 clarification of whether the terms Mean Higher High Water (“MHHW”) and OHWM had the same
12 meaning. BSRE addressed this issue in the April 2018 Revisions. The second comment, on page
13 115, requested a revision to the use of the terms “when there are revisions to the application for
14 other reasons”. The fact that the County only requested that this change be made “when there are
15 other revisions to the application for other reasons” clearly implies that this change was not urgent
16 and was not a reason to deny the applications in their entirety. Certainly, these comments did not
17 indicate that such an issue would be a “substantial conflict” with the code, as later claimed in the
18 May Recommendation. Contrary to the County’s claims and the Findings of Fact, Conclusions of
19 Law and rulings in the Decision related to the OHWM, BSRE was not derelict in failing to address
20 an issue which was not even raised by the County until May 9, 2018.

22 As soon as BSRE became aware of the issue with the OHWM, it authorized its consultants
23 to begin work to determine the OHWM. Gray Rand, while working on his Critical Area Report in
24 March 2018, investigated the OHWM and discovered that it could be discerned and that, therefore,
25 the buffer should be determined from the OHWM rather than the MHHW, which had been used
26

1 previously. *See* Gray Rand's May 23, 2018 Testimony. Once Mr. Rand became aware of the
2 issue, he immediately began working to address it. BSRE was unable to revise the plans prior to
3 the April 2018 Revisions, but BSRE continued working on such revisions after the April 27, 2018
4 submittal and, after meeting with the Department of Ecology, determined the appropriate location
5 of the OHWM. With its Motion for Reconsideration/Clarification, BSRE submitted an aerial
6 depiction of the OHWM and a memorandum from Perkins + Will which addresses the changes
7 needed to the site plan in order to provide a sufficient setback. *See* Exhibit R-1, Addenda 7-8. As
8 noted in the memorandum, BSRE can and will comply with the setback and make the necessary
9 changes. It is expected that these revisions may cause a loss of approximately 200 units. A
10 reduction of approximately 200 units in a development which is proposed to have 3080 units
11 represents a loss of less than 6.5% of the units. Contrary to C.74, this is not a "substantial element"
12 of the proposal and correcting this would not require a significant redesign of the proposal. *See*
13 Exhibit R-1, Addendum 8.

16 SCC 30.72.065(2)(f) allows for reconsideration before the Hearing Examiner where the
17 applicant proposes changes based on the hearing examiner's decision. SCC 30.72.065(2)(e) allows
18 for reconsideration where the applicant presents new evidence which could not reasonably have
19 been produced at the open record hearing. Addenda 7 and 8 were submitted to the Hearing
20 Examiner with BSRE's Motion for Reconsideration/Clarification and conclusively showed that
21 BSRE proposed changes based on May Recommendation and the Decision. This evidence was
22 not reasonably available at the hearing because the work was being done at the time of the hearing
23 and because the issue was not raised by the County until its May Recommendation, which was
24 received just days before the hearing began. In order to determine the OHWM, Mr. Rand had to
25 schedule a meeting with the Department of Ecology at the site, which was held on June 26, 2018.
26
27

1 Immediately after this meeting, Mr. Rand began the work to depict the OHWM on the site plans.
2 This was reflected in Addenda 7 and 8. As noted by Mr. Seng in Addendum 8, the work needed
3 to redesign the buildings located on the site to accommodate the change in the buffer area will take
4 approximately 2-4 weeks. This cannot be considered substantial given the amount of time already
5 spent by both BSRE and the County on this proposal. The Hearing Examiner failed to follow
6 appropriate procedures and committed an error of law by failing to even consider this additional
7 information.
8

9 For these reasons, all Findings of Fact, Conclusions of Law and rulings related to the
10 OHWM including, but not limited to, F.38, F.97, C.12, C.13, C.14, C.15, C.17, C.73, C.74, C.75,
11 C.78, and ruling 4, should be reversed on appeal. BSRE did not fail to act diligently by not
12 determining the OHWM earlier when the County failed to even raise this issue until its May
13 Recommendation and, further, this cannot be considered a substantial conflict given the
14 circumstances here.
15

16 **D. The Findings of Fact, Conclusions of Law and Rulings Related to the Innovative**
17 **Development Design Should be Reversed Because the Hearing Examiner Failed**
18 **to Follow Applicable Procedures by Failing to Consider the Changes Made and**
19 **Additional Evidence Presented by BSRE Based on the Decision.**

20 As noted above, SCC 30.72.065(2)(f) allows for reconsideration where the applicant
21 proposes changes based on the hearing examiner's decision. Here, BSRE made changes to its
22 applications based on the Decision and therefore all Findings of Fact, Conclusions of Law and
23 rulings related to the Innovative Development Design ("IDD"), including, but not limited to F.104,
24 C.76, C.77, C.78, and ruling 4, should have been revised to state that analysis of the "functions
25 and values" had been provided and that there was no substantial conflict with the Snohomish
26 County Code related to IDD. The Hearing Examiner's failure to consider these changes and
27

Hello Councilmembers,

I am a party of record. My comments relate to pages 8-11 of BSRE's appeal.

BSRE argues that the first time that the County claimed BSRE was deficient because the shoreline buffer was not determined based on the ordinary high water mark was in PDS's May 9, 2018, Supplemental Staff Recommendation.

That's like a person who knowingly has been submitting incorrect reports for seven years, saying: it's the first time my boss told me that I was doing anything wrong.

PDS caught BSRE's wrongdoing when it discovered inconsistencies in the revised site plans that BSRE submitted on April 27, 2018. Several sheets of the re-submitted site plans depicted two separate lines: one line was the ordinary high water mark with a notation saying that it was LOCATED MARCH 2018, and the other line was the mean higher high water line. Despite having located the ordinary high water mark, BSRE's site plans continued to measure the shoreline buffers from the mean higher high water line, making it appear that all proposed buildings were outside the restricted buffer zone when at least six were not.

An honest developer never would have re-submitted its site plans with such knowing misrepresentations.

As an excuse, BSRE says that after locating the ordinary high water mark in March, "it was unable to revise its site plans prior to resubmitting them on April 27." Well, that's hard to believe. BSRE is on record as saying the work would take only 2-4 weeks. See page 11 of its appeal. It had more than enough time since locating the ordinary high water mark in March to get the job done. No matter what, BSRE could at least have submitted rough sketches and other information to PDS to inform PDS that it was proceeding to correct things.

An honest developer either would have (1) postponed its re-submission until the revisions were made, or (2) gone ahead and re-submitted the site plans, but accompanied with sketches and a letter to PDS explaining that it had located the ordinary high water mark but needed more time to revise the site plans to fix the buffer lines. And it would have told PDS that a number of its proposed buildings would likely need to be relocated or restricted because they may in the restricted buffer zone.

All BSRE had to do was be honest with PDS. Instead, BSRE said nothing. It re-submitted defective plans that misrepresented the buffers.

Please affirm the Hearing Examiner's denial of BSRE's applications, and please affirm his refusal to extend BSRE's application expiration date.

Thank you,

Jan Eckmann

1 **C. With Respect to all Findings, Conclusions and Rulings Related to the Ordinary**
2 **High Water Mark, the Hearing Examiner Committed an Error of Law and Failed**
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8 noted in the memorandum, BSRE can and will comply with the setback and make the necessary
9 changes. It is expected that these revisions may cause a loss of approximately 200 units. A
10 reduction of approximately 200 units in a development which is proposed to have 3080 units
11 represents a loss of less than 6.5% of the units. Contrary to C.74, this is not a "substantial element"
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25 and values" had been provided and that there was no substantial conflict with the Snohomish
26 County Code related to IDD. The Hearing Examiner's failure to consider these changes and
27

Hello Councilmembers,

I am a party of record.

At page 10 of its appeal, BSRE says that in order to determine the ordinary high water mark, its consultant had to schedule a meeting with the Department of Ecology at the site, which occurred on June 26, 2018.

BSRE misleads you. The June 26 Ecology site meeting was not "to determine" the ordinary high water mark; rather, it was to have Ecology verify the ordinary high water mark that BSRE's expert field biologist had located three months earlier, in March.

The law does not require Ecology's verification, but it is commonly sought. But the law *does* require that the ordinary high water mark and shoreline buffers be correctly depicted on a project's site plans. BSRE failed to do this. It submitted faulty site plans in 2011, and again in 2017, and yet again in 2018.

After seven years of inaction, BSRE finally located the ordinary high water mark in March. Waiting three months, BSRE's consultant emailed Ecology on June 11 to request a site meeting. Just two weeks later, on June 26, two representatives from Ecology met BSRE's consultant at Point Wells to verify the mark that had been located in March. The site meeting could have taken place in March or early April if BSRE had asked, but it didn't ask.

During the June 26 site meeting, stakes were placed in the ground at various spots to identify the ordinary high water mark, and photos were taken. It was agreed that the consultant would send a follow-up report to Ecology, with details of GPS coordinates for the stakes, and other information. Ecology would then review the report before deciding whether to verify the ordinary high water mark. As of yesterday, October 2, more than three months since the site meeting, apparently Ecology still hasn't received the report.

Maybe BSRE is concerned that the report might show that the ordinary high water mark is 20-30 feet farther inland at spots, compared to the mark its consultant located in March. Based on the March one report, BSRE recently admitted in its Motion for Reconsideration that six of its buildings were within the restricted buffer zone. If it turns out that the mark is 20-30 feet farther inland at spots, that would cause one or two additional buildings to be located within the restricted buffer zone. And parts of the parking garage would be within the restricted buffer zone too.

BSRE's conduct has been suspect all along. As the Examiner concluded, it exhibits a failure of diligence at the least.

Please affirm the Hearing Examiner's denial of BSRE's applications, and please affirm his refusal to extend BSRE's application expiration date.

Thank you,

George Mayer

1 previously. *See* Gray Rand's May 23, 2018 Testimony. Once Mr. Rand became aware of the
2 issue, he immediately began working to address it. BSRE was unable to revise the plans prior to
3 the April 2018 Revisions, but BSRE continued working on such revisions after the April 27, 2018
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24 received just days before the hearing began. In order to determine the OHWM, Mr. Rand had to
25 schedule a meeting with the Department of Ecology at the site, which was held on June 26, 2018.
26
27

Hello Councilmembers,

I am a party of record.

At page 10 of its appeal, BSRE claims that it could not have produced the evidence about the ordinary high water mark and the shoreline buffers at the May hearing. No, the record says otherwise. BSRE has had seven years to produce the evidence and comply with the law.

County Code requires that the ordinary high water mark and shoreline buffers be accurately depicted on a project's site plans. BSRE failed to do so, three times. First, when it submitted its site plans in 2011, again in 2017, and yet again in 2018.

Also, given that BSRE located the ordinary high water mark in March 2018, it is incredulous for BSRE to say that it could not have produced the evidence about the ordinary high water mark and the shoreline buffers at the hearing held two months later in May. There's no excuse for BSRE's dilatory conduct.

My remaining comments relate to page 5 of BSRE's September 14 rebuttal filing, and the recently discovered flaw discussed in Mr. McCormick's September 7 memorandum.

On page 2 of my handout, you'll find a screenshot of BSRE's 2011 site plans, copied from McCormick's memorandum. It shows that the 150-foot and 200-foot buffers were improperly measured from the mean higher high water line, when BSRE was supposed to measure the buffers from the ordinary high water mark. My focus, however, is on something else.

The screenshot shows that BSRE plotted the improperly-used mean higher high water line incorrectly, a double whammy. The mean higher high water line's elevation is shown to be 8.61 feet. Yet that line, the red one, is plotted as being between the 6-foot and 8-foot contour lines. With an elevation of 8.61 feet, it should be plotted between the 8-foot and 10-foot contour lines. This is huge error. If plotted correctly, the shoreline buffers would be 30 to 50 feet farther inland. This error is further evidence of BSRE's glaring lack of diligence.

In its rebuttal filing, BSRE says that, "McCormick has no support for this allegation." Is that all BSRE can say? Look for yourself, the support is right there on the screenshot. An honest developer would have admitted its mistake, once it was brought to its attention. And there is another problem, more carelessness. The screenshot shows an elevation of 8.61 feet, but BSRE's site plans submitted as Exhibit B-7 in April 2018 show the elevation is 8.84 feet. Which is it?

BSRE's conduct has been suspect all along. Its lack of diligence is astonishing.

Please affirm the Hearing Examiner's denial of BSRE's applications, and please affirm his refusal to extend BSRE's application expiration date.

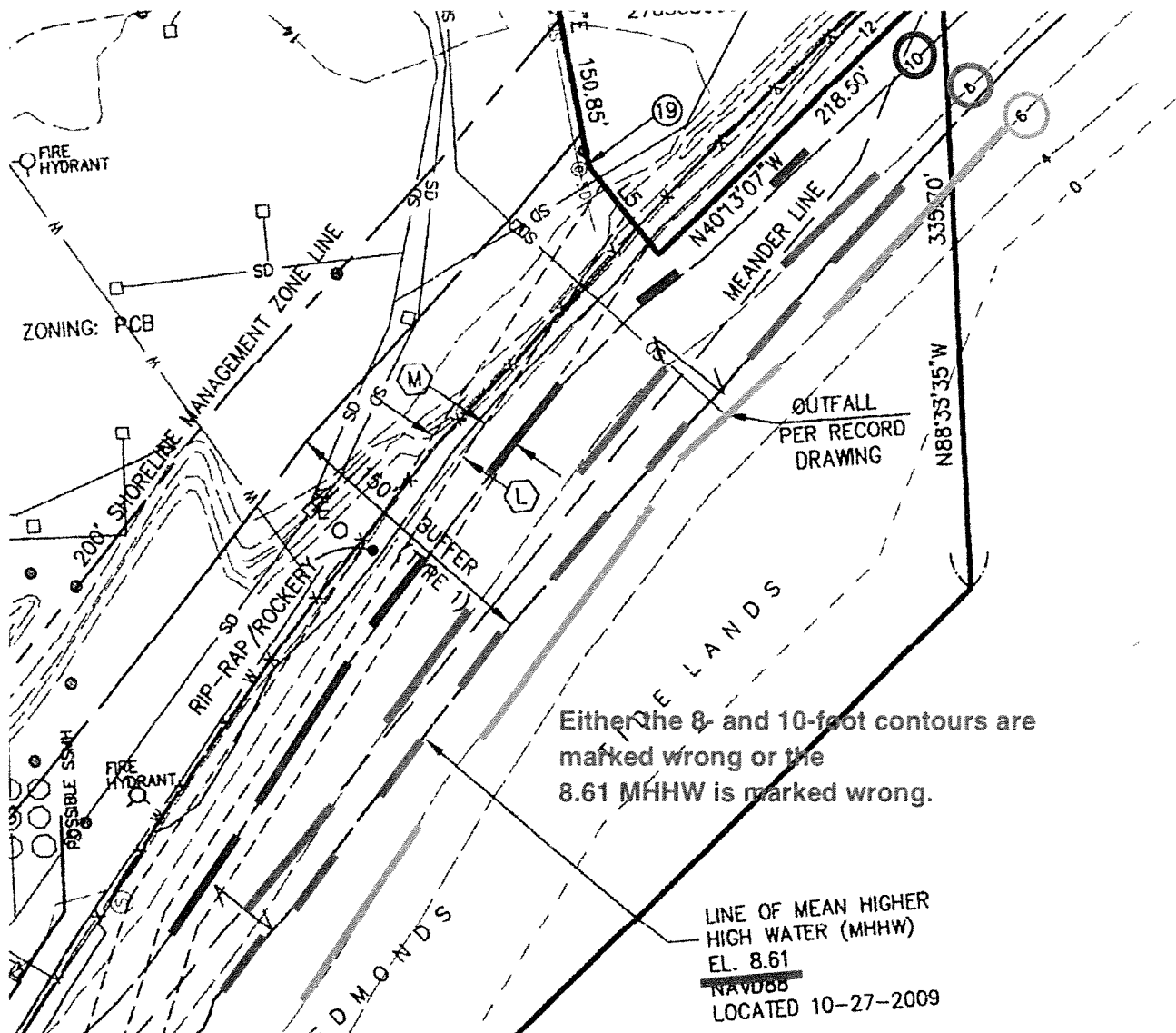
Thank you,

Tracy Tallman

Below is a marked screenshot from Sheet EX2 of BSRE's 2011 site plans. Sheet EX2 is a survey of existing conditions. The screenshot is from the southern portion of the site.

Sheet EX2 notes that the MHHW elevation is 8.61 feet. The MHHW line (red) is depicted as being located between the 6-foot (pink) and 8-foot (green) contour lines. However, a MHHW line with an elevation of 8.61 feet should be located between the 8-foot (green) and 10-foot (blue) contour lines.

BSRE's error is also present in its 2017 and 2018 site plans. One difference is that the 2018 site plans say the elevation is 8.84 feet, not 8.61 feet. No explanation was given for its revision.



1 previously. *See* Gray Rand's May 23, 2018 Testimony. Once Mr. Rand became aware of the
2 issue, he immediately began working to address it. BSRE was unable to revise the plans prior to
3 the April 2018 Revisions, but BSRE continued working on such revisions after the April 27, 2018
4 submittal and, after meeting with the Department of Ecology, determined the appropriate location
5 of the OHWM. With its Motion for Reconsideration/Clarification, BSRE submitted an aerial
6 depiction of the OHWM and a memorandum from Perkins + Will which addresses the changes
7 needed to the site plan in order to provide a sufficient setback. *See* Exhibit R-1, Addenda 7-8. As
8 noted in the memorandum, BSRE can and will comply with the setback and make the necessary
9 changes. It is expected that these revisions may cause a loss of approximately 200 units. A
10 reduction of approximately 200 units in a development which is proposed to have 3080 units
11 represents a loss of less than 6.5% of the units. Contrary to C.74, this is not a "substantial element"
12 of the proposal and correcting this would not require a significant redesign of the proposal. *See*
13 Exhibit R-1, Addendum 8.

14
15
16 SCC 30.72.065(2)(f) allows for reconsideration before the Hearing Examiner where the
17 applicant proposes changes based on the hearing examiner's decision. SCC 30.72.065(2)(e) allows
18 for reconsideration where the applicant presents new evidence which could not reasonably have
19 been produced at the open record hearing. Addenda 7 and 8 were submitted to the Hearing
20 Examiner with BSRE's Motion for Reconsideration/Clarification and conclusively showed that
21 BSRE proposed changes based on May Recommendation and the Decision. This evidence was
22 not reasonably available at the hearing because the work was being done at the time of the hearing
23 and because the issue was not raised by the County until its May Recommendation, which was
24 received just days before the hearing began. In order to determine the OHWM, Mr. Rand had to
25 schedule a meeting with the Department of Ecology at the site, which was held on June 26, 2018.
26
27

1 that an issue with the OHWM is a "substantial conflict" with the Code. Furthermore, as is set forth
2 in the Appeal, BSRE has confirmed the location of the OHWM with the Department of Ecology
3 and it may result in a loss of 6.5% of the proposed units. It is illogical to find that a loss of 6.5%
4 of the units is a "substantial" issue.

5
6 The May 2018 Letter was the first time that the County determined that the shoreline buffer
7 was incorrectly determined. See Exhibit N-2, p.19. This issue has been resolved and the plans
8 will be adjusted accordingly. The Hearing Examiner failed to follow applicable procedures by
9 failing to consider the additional information provided by BSRE on this issue at the conclusion of
10 the hearing.¹

11 12 IV. CONCLUSION

13 Based on the foregoing, BSRE respectfully requests that the Snohomish County Council
14 grant the relief requested in the Appeal.

15 DATED this 14th day of September, 2018.

16
17 
18 Gary D. Huff, WSBA #6185
19 Douglas A. Luetjen, WSBA #15334
20 J. Dino Vasquez, WSBA #25533
21 Jacque E. St. Romain, WSBA #44167
22 **KARR TUTTLE CAMPBELL**
23 701 Fifth Avenue, Suite 3300
24 Seattle, WA 98104
25 Telephone: 206-223-1313
26 Facsimile: 206-682-7100
27 Email: dvasquez@karrtuttle.com
Attorneys for Appellant

25 ¹ McCormick makes additional allegations about the Mean Higher High Water mark (the "MHHW"),
26 claiming that BSRE somehow incorrectly identified the MHHW on its plans. McCormick has no support for this
27 allegation. Further, even if BSRE had somehow misidentified the MHHW, this is irrelevant because the plans will be
redesigned and buildings will be adjusted based on the OHWM, which has been determined in conjunction with the
Department of Ecology.

Hello Councilmembers,

I am a party of record. My comments relate to page 30 of BSRE's appeal.

BSRE argues that its Short Plat application is unaffected by the perceived deficiencies in its other applications, so it should not be terminated. BSRE asserts that the Hearing Examiner committed an error by failing to exclude BSRE's Short Plat application from the Decision.

BSRE is wrong. First, its Short Plat application is inextricably intertwined with its other applications. And second, its Short Plat application suffers from many of the same deficiencies as do its other applications. For evidence of the Short Plat application's connectedness to BSRE's Urban Center and other applications, see BSRE's original Short Plat application, Exhibit A-2, saying that its proposed short plat is "to support future urban center redevelopment."

And see Exhibit A-34, the updated Short Plat checklist that BSRE submitted five months ago. As shown on the checklist, BSRE submitted many required items that are also required for its other applications, including: site plans delineating existing contour lines, the layout of all proposed roads, the area of proposed open space, geologically hazardous areas on or within 200 feet of the site, and the location of all proposed buffers and setbacks; as well as a critical areas study, a geotechnical report, a hydro-geologic report, traffic studies, and a transportation demand management offer, to which BSRE added a hand-written notation saying, "PART OF UDC APP." All of these items evidence the Short Plat application's obvious and direct connectedness to BSRE's other applications.

Also, like BSRE's other applications, the mentioned Short Plat items exhibit substantial Code conflicts and deficiencies. For instance, regarding the required geotechnical report, the Examiner concluded at paragraph C.70. that, "the failure of the geotechnical report to confirm the site's suitability for the proposed development remains substantially in conflict with county code." And then there's BSRE's noncompliance with the checklist requirement that buffers and setbacks be identified. BSRE's Short Plat site plans, found at Exhibit B-9, are noncompliant like its other applications because they incorrectly depict the 150-foot and 200-foot shoreline buffers on ten of its submitted sheets, measuring them incorrectly from the mean higher high water line, rather than the ordinary high water mark. The Examiner concluded at paragraph C.72 that all of BSRE's applications measured the buffers this way. And this resulted in a substantial Code conflict due to some of BSRE's buildings intruding on the true and correct shoreline buffer zones.

The Examiner acted properly in denying and terminating BSRE's Short Plat application along with BSRE's other applications. All of its applications are intertwined and suffer from many of the same deficiencies. Please affirm the Examiner's decision denying all of BSRE's applications, including its Short Plat application.

Thank you,

Kathy Zufall

1 Land Use Applications within six (6) months of the Hearing Examiner's Decision and have those
2 Land Use Applications considered under the law in effect at the time that the Land Use
3 Applications were originally submitted in 2011.

4
5 **I. BSRE's Short Plat Application (11-101007 SP) is Unaffected by the Perceived
Deficiencies in the Application and Should Not Be Terminated.**

6 The Hearing Examiner failed to address BSRE's request that the Short Plat Application be
7 deemed to be excluded from the decision terminating the Land Use Applications. BSRE asserts
8 that BSRE's short plat application stands alone and is unaffected by the issues raised in the hearing
9 and in the Decision. The Hearing Examiner committed an error of law by failing to exclude
10 BSRE's short plat application from the Decision.
11

12 **IV. CONCLUSION**

13 Base on the foregoing, BSRE requests that the Snohomish County Council reverse the
14 Hearing Examiner's Decision and (1) deny the County's request to deny BSRE's applications
15 without an environmental impact statement, (2) grant BSRE's request for an extension, (3) find
16 that the Land Use Applications are vested to SCC 30.34A.180 [2007], and (4) reverse all Findings
17 of Fact, Conclusions of Law or rulings which relate to any of the above issues.
18

19 DATED this 17th day of August, 2018.

20
21 
22 Gary D. Huff, WSBA #6185
23 Douglas A. Luetjen, WSBA #15334
24 J. Dino Vasquez, WSBA #25533
25 Jacque E. St. Romain, WSBA #44167
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Attorneys for Appellant

Hello Councilmembers,

I am a party of record. My comments relate to pages 23-27 of BSRE's appeal.

BSRE argues that the Hearing Examiner should have granted its request for an extension. It asserts that it has been diligent and deserves an extension.

BSRE specifically contests the Examiner's conclusion at C.12 that, "A glaring example of BSRE's failure to prosecute its applications diligently is its failure to ascertain the ordinary high water mark until late spring 2018."

BSRE claims that for the last seven years it didn't know it was doing anything wrong when determining where the 150-foot and other shoreline buffers are located; because no one told them? What's the likelihood that a developer of a billion-dollar project, spending over \$10 million on the supposed best advice money can buy, can't read and apply a very simple and clear code provision? Does that sound like a truthful and diligent developer?

And how can anyone believe BSRE when it submitted site plans in April 2018 that identified the ordinary high water mark with a note that the mark had been located in March 2018 (Exhibit B-7, page EX2 attached as page 2), knew that the shoreline buffers are to be measured from that mark, yet even with the correct mark finally showing on their plans the shoreline buffers were still measured from the wrong mark. Why didn't BSRE at least tell PDS that there was an issue with the shoreline buffers that it needed to correct? Does that sound like a truthful and diligent developer?

BSRE contests the Examiner's conclusion at C.12 that BSRE exhibited a lack of diligence in its "desultory approach to obtaining Sounder service justifying a 90 foot height bonus." BSRE claims it was as diligent as it could be and took all available steps available. Sound Transit says they heard nothing from BSRE between 2014 and May 2018 (Exhibit H-30). Is that diligent or desultory?

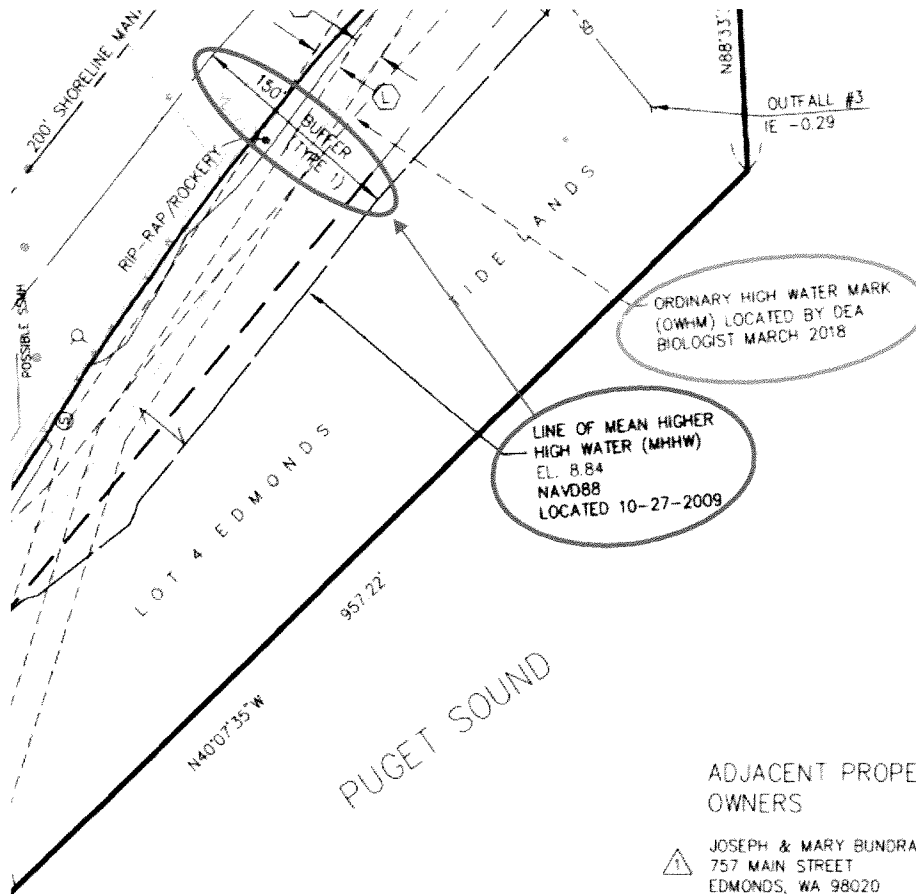
Consider BSRE's attempt to wiggle out of the second access road requirement. After ignoring the requirement in their original plans, being notified multiple times that a second road was needed, trying to claim a second road was not warranted (Exhibit C-21), and after stalling for 6 years, BSRE finally submitted incomplete and non-compliant plans in 2017. How is that diligent and truthful?

If BSRE was diligent, why did it take four years to respond to any of the 42 issues that PDS raised in its 2013 review completion letter? And why did BSRE fail to even start to address half of the issues, and only partially address another 1/3 of them? BSRE addressed just one issue completely. I don't think any teacher would regard completing 1 assignment out of 42 as a sign of diligence.

I trust that you will agree with the Hearing Examiner's conclusion that BSRE has not been diligent, and that its request for another extension of its applications expiration date was appropriately denied.

Thank you.

Tom Mailhot



LEGEND

SD	EXISTING STORM DRAIN PER RECORD DRAWING (APPROXIMATE LOCATION)
A	EXISTING WATER LINE PER RECORD DRAWING (APPROXIMATE LOCATION)
HP	OVERHEAD POWER LINE (APPROXIMATE LOCATION)
G	GAS MAIN (APPROXIMATE LOCATION)
L	EXISTING CATCH BASIN PER RECORD DRAWING (APPROXIMATE LOCATION)
F	EXISTING FIRE HYDRANT PER RECORD DRAWING (APPROXIMATE LOCATION)
SD	EXISTING STORM DRAIN PER SURVEY
⊗	EXISTING CATCH BASIN PER SURVEY
⊙	EXISTING FIRE HYDRANT PER SURVEY

ADJACENT PROPERTY OWNERS

- 1 JOSEPH & MARY BUNDRANT
757 MAIN STREET
EDMONDS, WA 98020
- 2 DARREN M. & SANTI HUGHES
20456 RICHMOND BEACH DR NW
WOODWAY, WA 98020
- 3 DOUGLAS K. & DONNA L. SPEE
1719 NW 193rd
SHORELINE, WA 98177
- 4 JEFFREY D. LEITNER
20452 RICHMOND BEACH DR NW
WOODWAY, WA 98020
- 5 KAREN E. BRIGGS
20450 RICHMOND BEACH DE NW
SHORELINE, WA 98177
- 6 KING COUNTY/ROW SUPERVISOR
201 S JACKSON ST M/S 0503
SEATTLE, WA 98101-3855
- 7 POINT WELLS, LLC
15898 YOKEKO DR
ANACORTES, WA 98221
- 8 JOHN & NANCY ZEVENBERGEN
640 NW 180th
SHORELINE, WA 98177



**DAVID EVANS
AND ASSOCIATES IN**
1620 W Marine View Drive, Suite 201
Everett Washington 98201
Phone 425 259 4069

REVISIONS: APPD

REVISED APRIL 15, 2018

REVISED APRIL 12, 2017

DATE: NOVEMBER, 2010
DESIGN:
DRAWN: GCW
CHECKED: RCH
REVISION
NUMBER:

SCALE: 1"=100'

PROJECT NUMBER:
PARA00000002

DRAWING FILE:

SHEET NO.

EX2

OF 2

Hello Councilmembers,

I am Bill Krepick, resident of Woodway, and a party of record. My comments relate to BSRE's Appeal wherein they claim they were not given an opportunity to justify why 21 buildings in their project application are over 90 feet tall and why they believe they have satisfied the Code which states that proximity to mass transit permits them to build 180 ft towers.

As the Examiner said, in paragraph C.37, "BSRE's bare proposal for buildings twice the permitted height does not demonstrate either necessity or desirability." The additional height must be "for some reason other than the applicant's desire". The record lacks any evidence that the additional height is necessary or desirable from a public, aesthetic, planning, or transportation standpoint."

I won't repeat the points made by Speaker #5 about the "necessary or desirable" issue of 90 ft buildings other than to say that BSRE has had more than adequate time and prior extensions to resolve density and transportation issues with neighboring Town of Woodway and City of Shoreline. Nowhere have I seen or heard of a single resident or government leader in Woodway, Edmonds, Richmond Beach, or Shoreline who supports the scale and scope of the BSRE project. As far as I know, there is not a single real estate development north of downtown Seattle along the Puget Sound shoreline that has ANY buildings taller than 60 feet. It is no wonder there is no support for BSRE's Point Wells project and it is impossible for BSRE to prove building heights over 60 feet are necessary or desirable.

BSRE's claim that the Code permits buildings up to 180 ft tall because the project is proximate to mass transit - is also false. BSRE has failed to satisfy this Code section as other speakers have stated and as Tom McCormick clearly explained in his memo to the Council on May 15, 2018. In addition, there is no commitment from Burlington Northern or the Sounder Transit to build a mass transit station at Point Wells, but more importantly, the Sounder Train schedule with 4 commuter trains in the morning and 4 in the afternoon is not at all adequate to support high capacity mass transit. Having only 8 trains serve Seattle each day is not enough to satisfy commuter needs and to deter automobile traffic- both of which are required for effective high capacity mass transit. By not having a true mass transit solution for Point Wells, BSRE fails to meet Code and is forcing an unsupportable and unsafe traffic overload on the single 2 lane access road in Richmond Beach.

One of the primary responsibilities of Judges and Hearing Examiners is to interpret the law and then apply it to the facts. The Examiner did just that and made the correct decision to deny BSRE's application. Buildings taller than 90 feet at Point Wells are neither necessary or desirable, and buildings of 180 ft height are not permitted due to the lack of an onsite mass transit system. Both reflect substantial Code conflicts and both should not be permitted. The Examiner correctly denied BSRE's applications. Please affirm the denial.

Thank you.

Robin McClelland, FAICP
104 NW 180th Street Shoreline, WA 98177

October 2, 2018

Snohomish County Council
3000 Rockefeller Avenue
Everett, WA 98201-4046

RE: Hearing Examiner Decision

Dear Council Members:

It is impossible to conclude anything other than the request for further consideration must be denied. The location of the proposed secondary access road is within a landslide hazard area and a second public road is required according to the Snohomish County Engineering Design and Development Standards.

The standards state:

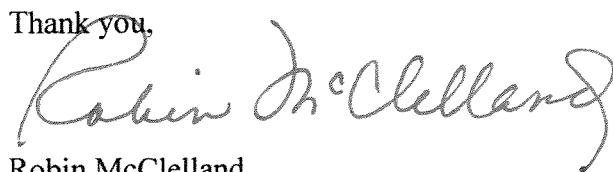
A public road, private road or drive aisle serving more than 250 ADT (Average Daily Trips) shall connect in at least two locations with another public road, private road or drive aisle meeting the applicable standard(s) for the resulting traffic volume, so that a dead end road system is not created.

A deviation from the standards constitutes an ethical lapse of professional judgment that would result in irreparable harm.

By its own admission, BSRE proposes a development that would generate over 12,000 average daily trips for a site with only one road access - up Richmond Beach Road in Shoreline which has no jurisdiction over the proposal but would forever suffer the consequences of such limited access.

There is no reasonable - scientific or engineering - solution to this dilemma.

Thank you,



Robin McClelland

Attachments:

Hearing Examiner's Decision pages 13 and 19
Engineering Design and Development Standards 2012 page 32

1 E. CRITICAL AREAS

2 1. Landslide Hazard Area Deviation

3 F.76 The project site contains landslide hazard areas on the east side of the railroad
4 tracks.⁶⁴ The proposed secondary access road, retaining wall, and the entire Urban
5 Plaza portion of the development are within a landslide hazard area or its setback.
6 These are substantial and material features of the proposed development.

7 F.77 PDS advised BSRE in 2013 that development activities were generally not allowed
8 within the landslide hazard area⁶⁵ and asked BSRE to address the issue.⁶⁶ BSRE
9 could either redesign the project or ask PDS to approve a deviation.⁶⁷

10 F.78 BSRE asked HartCrowser in April 2018 to prepare a deviation request.⁶⁸ BSRE
11 submitted the deviation request to PDS on April 27, 2018.⁶⁹

12 F.79 BSRE's deviation request explained the lack of alternate location for the secondary
13 access road. The deviation request did not explain the lack of alternate location for the
14 Urban Plaza. The deviation request relied on a subsurface conditions report.⁷⁰

15 F.80 PDS identified several concerns with the deviation request and subsurface conditions
16 report in its supplemental staff report.⁷¹ BSRE responded to those concerns by
17 submitting a revised deviation request on May 15, 2018, the day before the open
18 record hearing started.⁷²

19 F.81 Randolph Sleight, P.E., is PDS' Chief Engineering Officer to whom the PDS Director
20 delegates decisions on deviations such as this. Mr. Sleight has granted less than half
21 a dozen landslide hazard area deviation requests in his long career and those only for
22 single family residences which had no alternate locations on the lots.

⁶⁴ Ex. B.7, Sheet A-051.

⁶⁵ "Development activities, actions requiring project permits and clearing shall not be allowed in landslide hazard areas or their required setbacks unless there is no alternate location on the subject property." SCC 30.62B.340(1).

⁶⁶ Ex. K.4, p.7.

⁶⁷ Deviations from setback requirements are allowed only when: (1) there is no alternate location for the structure on the subject property; and (2) a geotechnical report meeting the requirements of SCC 30.62B.320 demonstrates that the alternative setbacks provide protection which is equal to that provided by the standard minimum setbacks. SCC 30.62B.340(2)(b).

⁶⁸ Testimony of Bingham.

⁶⁹ Ex. C.27.

⁷⁰ Ex. C.33.

⁷¹ Ex. N.2, pp. 21-22.

⁷² Ex. A.37.

1 either be removed or their footprints sliced off at the buffer. At the most, the locations
2 of many or all of the proposed buildings must be changed.

3 C.16 BSRE made no effort to ascertain the ordinary high water mark until March 2018.

4 C.17 Waiting seven years to determine the area in which one can lawfully build is a failure
5 of diligence at the least and dilatory at the most.

6 C.18 BSRE believed that traffic would be the largest hurdle it would have to overcome.
7 BSRE proposed a development that would generate over 12,000 average daily trips
8 from a site with only one road access: Richmond Beach Drive in the city of Shoreline
9 to the south. Richmond Beach Drive is a residential two lane road with no shoulders.
10 The water side guardrail sits just off the fog line of the southbound travel lane and
11 single family residences are on the east side of the northbound travel lane.

12 C.19 Starting in 2013, BSRE discussed traffic issues with Shoreline. It entered into a
13 memorandum of understanding regarding a public process and held seven public
14 meetings on segments A (Richmond Beach Drive) and B (Richmond Beach Road).
15 Although BSRE believed it had fundamentally resolved traffic issues, Shoreline
16 vehemently disagrees.¹⁰¹ The lack of the necessary, critical, complete traffic corridor
17 study is further evidence of a lack of reasonable diligence.

18 C.20 Other examples of a lack of reasonable diligence include a desultory approach to
19 obtaining Sounder service justifying a 90 foot height bonus and waiting until April 2018
20 to prepare and submit requests for deviations and a variance. In all of these instances,
21 BSRE knew or should have known they would be needed and could have prepared
22 and submitted them sooner. High capacity transit is critical to building height. All of
23 these are material to the design of the urban center and the number, size, and
24 location of buildings.

25 C.21 Weighing the evidence and the totality of circumstances, the Hearing Examiner
26 concludes that BSRE did not exercise reasonable diligence in the prosecution of its
27 applications. No evidence proved that BSRE was prevented from diligently pursuing
28 its applications from 2013 until now.

¹⁰¹ Shoreline vehemently testified during the public comment period of the open record hearing that it did not reach agreement with BSRE and asked that the project be denied due to unmitigated impacts on Shoreline. Except as it relates to the sequence and duration of BSRE's efforts, the traffic issues are not ripe for decision. PDS does not argue traffic as a basis for early termination of the environmental impact evaluation and BSRE does not ask for approval of the project. The Hearing Examiner agrees with Shoreline and BSRE that traffic is a major issue if, as, and when this project (or a similar one) reaches an open record hearing for approval. That time is not yet, however.

Connectivity requirements for private road network elements will be evaluated as part of the development review process.

- 5) A public road, private road or drive aisle serving more than 250 ADT shall connect in at least two locations with another public road, private road or drive aisle meeting the applicable standard(s) for the resulting traffic volume, so that a dead end road system is not created.
- 6) Block lengths in urban areas shall be between 125 feet and 800 feet. The public roads defining a block shall comply with the minimum centerline offset standards of Section 3-09. Access points within a block shall comply with the separation and corner clearance requirements of Sections 2-04 and 2-05.
- 7) Public road connections shall be constructed to any public road stubs on adjacent parcels that have been constructed to shared boundaries. This requirement may be waived by EDDS deviation where it can be shown that topography, the surrounding road network, soils, hydrology or other factors make the connection impractical or infeasible. However, a public road connection shall be provided elsewhere to achieve the 800-foot (urban)/1320-foot (rural) road intersection standard in Section 3-01.B.3 above.

Connectivity requirements for private road network elements will be evaluated as part of the development review process.

- 8) Where a public road stub on an adjacent parcel has been established by right-of-way but is not yet constructed to the shared boundary, then a public road connection shall be constructed to meet the existing road on the adjacent parcel. This requirement may be waived by EDDS deviation where it can be shown that topography, the surrounding road network, soils, hydrology or other factors make the connection impractical or infeasible. However, a public road connection shall be provided elsewhere to achieve the 800-foot (urban)/1320-foot (rural) intersection standard in Section 3-01.B.3 above.

Connectivity requirements for private road network elements will be evaluated as part of the development review process.

- 9) The Engineer may determine that a non-motorized connection (shared use path or bikeway) between developments is appropriate in place of a roadway, through the deviation process.

C. Fire Apparatus Access Roads (Fire Lanes)

- 1) County fire code requirements for "fire apparatus access roads" or fire lanes are contained in SCC 30.53A.512. Any road network element that provides primary access to more than two dwelling units, or two Group U occupancies as defined by the building code, is a fire lane. Accordingly, all road network elements discussed in this chapter must meet fire lane specifications, except:
 - a driveway (that serves a single-family residence or duplex on one lot);
 - a shared driveway (that serves no more than two dwelling units or two Group U occupancies);
 - an alley that provides secondary access to the rear of a structure, lot or use; or